

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 255

OSCAR THORNTON, SHABIE THORNTON, INMAN
THORNTON, ET AL., PETITIONERS,

vs.

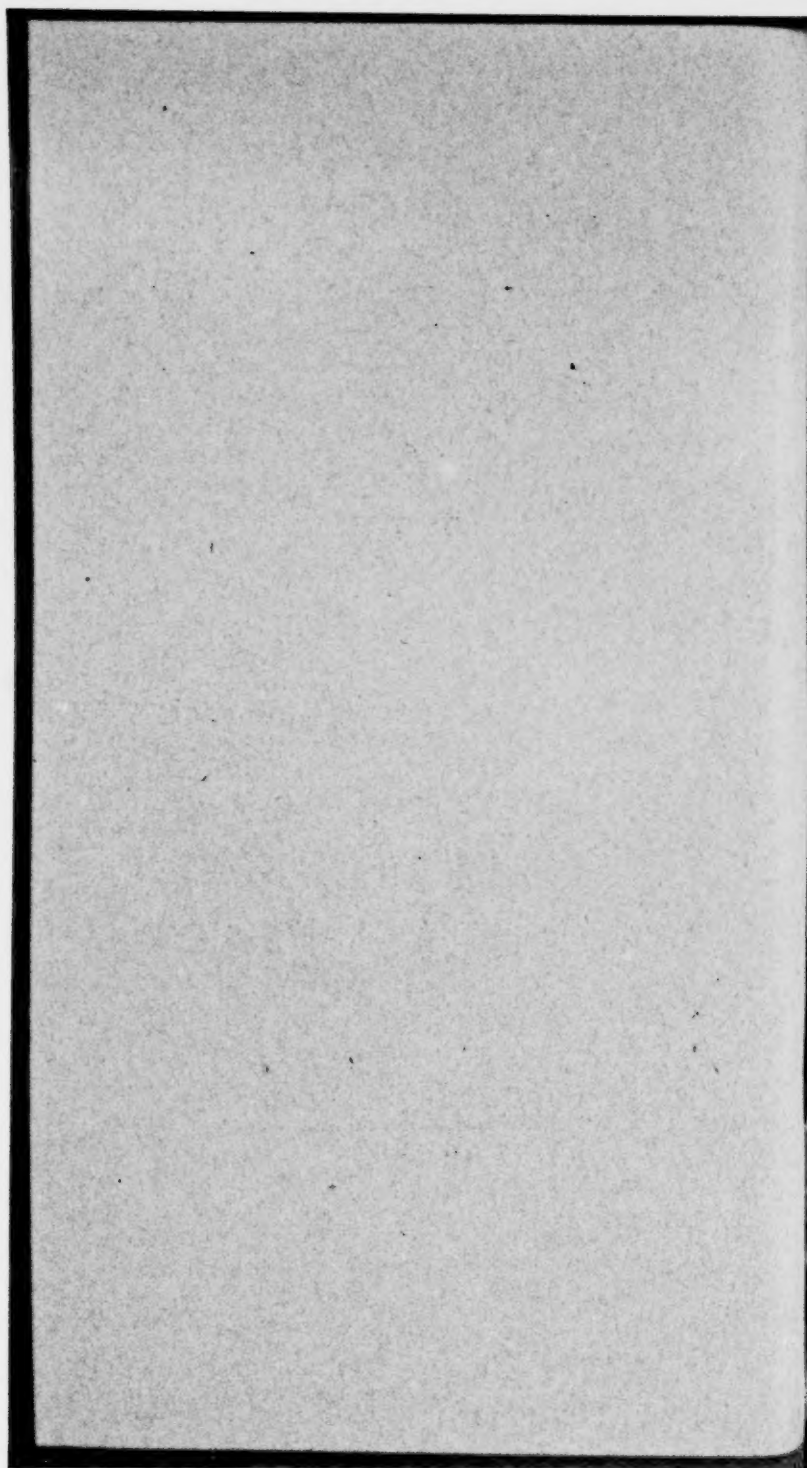
THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 26, 1925

CERTIORARI GRANTED MARCH 9, 1925

(30,829)



(30,829)

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[fol. a]

CAPTION—Omitted

[fol. 1] **IN UNITED STATES DISTRICT COURT,
JUNE TERM, 1923**

UNITED STATES OF AMERICA.

Southwestern Division,

Southern District of Georgia:

INDICTMENT—Filed June 14, 1923

The grand jurors of the United States, selected, chosen, and sworn in and for the Southwestern Division of the Southern District of Georgia, upon their oaths present:

First Count

That heretofore, to-wit, on the tenth day of July, in the year Nineteen Hundred Twenty, one Oscar Thornton, one Shabie Thornton, one Inman Thornton, one Wesley McDonald, one Waverly McDonald, one Tinker Carroll, one J. B. Hicks, one W. W. Pennington, one H. J. Carter, alias Mann Carter, one Fred Carter, one Will Carter, one Borah Carter, one Floyd Carter, one George Herndon, one Rader Carter, one Wiley Corbett, one Frank Staten, one E. W. Prescott, one Buck Carter, one Neely Hires, one Jim Howell, whose further respective given names are to the said grand jurors unknown, hereinafter termed defendants, and others to the grand jurors unknown, did, in the County of Echols, within the Southwestern Division of the Southern District of Georgia, and within [fol. 2] the jurisdiction of this Court, unlawfully, willfully, and knowingly conspire, combine, agree, and confederate together to commit an offense against the United States, that is to say said defendants, above named, did on said date, within the jurisdiction hereinbefore set out, and continuously thereafter up to the finding and return of this indictment, unlawfully, willfully, and knowingly, conspire, combine, confederate and agree to use deadly and dangerous weapons, to-wit shotguns, pistols, revolvers, rifles, and other weapons, to the Grand Jurors unknown, for the purpose of deterring and preventing R. S. English, H. J. Murphey, W. D. Counts, J. P. Winberly, Henry Howell, Roy S. Ritchey, John Lofton, Junior, Frank Peterson and Max C. Lochridge, all employees of the Bureau of Animal Industry of the United States Department of Agriculture, from discharging their duties as such employees of said Bureau of Animal Industry, which said employees were then and there charged with the duty of supervising the dipping of, and causing to be dipped, cattle, to-wit; cows, bulls, yearlings, calves, and oxen, in order to prevent the spread of splenic fever among cattle, and in order to eradicate and remove from tick-infested animals what is commonly known as the cattle fever tick, which said weapons, aforesaid, were used in divers and sundry ways for the purpose aforesaid, that is to

say said weapons were then and there used by said defendants by firing same at, towards, and in the direction of said employees of said Bureau of Animal Industry, and were used for the shooting and killing the said Max C. Lochridge, an employee of said Bureau of Animal Industry, and by shooting and wounding said Roy S. Ritchey, an employee of the Bureau aforesaid, and by the use of knucks upon the person of one W. D. Counts, an employee of the [fol. 3] Bureau aforesaid, and as well for the purpose of threatening, and intimidating said employees of the Bureau aforesaid, in conjunction with the use of vile, vulgar, and obscene language, too vile, vulgar and obscene to be herein set out, and a permanent record made thereof in this Honorable Court, which said weapons so used as aforesaid, were then and there used with intent to commit a bodily injury upon said employees of the Bureau aforesaid, who were then and there engaged in the performance of their duties as employees of said Bureau of Animal Industry, and were then and there performing their duties as such employees, it being then and there well known to said defendants and to each of them, that the said R. S. English, H. J. Murphey, W. D. Counts, J. P. Wimberly, Henry Howell, Roy S. Ritchey, John Lofton, Junior, Frank Peterson, and Max C. Lochridge were employees of the Bureau aforesaid, and were then and there engaged in the performance and execution of their duties as such.

Overt Act One

And in furtherance of said conspiracy and in order to effect the objects thereof, the said defendants did, on or about the 27th day of August, in the year Nineteen Hundred and Twenty-two, incite, encourage, and cause the said Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll to shoot at, towards, and in the direction of said employees of the Bureau aforesaid, who were then and there in camp for the night at what was and is known as Camp McKinnon, in said County of Echols, which said defendants in this overt act named, [fol. 4] did then and there use deadly and dangerous weapons, to-wit: shotguns, pistols, rifles, and other deadly and dangerous weapons to the Grand Jurors unknown, by shooting at, towards, and in the direction of said employees of the Bureau aforesaid, as in this overt act hereinbefore set out, with intent then and there to commit bodily injuries upon said employees, and to deter and prevent them from discharging their duties as such employees, said defendants, and each of them, in this indictment and in this overt act named, then and there well knowing that said R. S. English, H. J. Murphey, W. D. Counts, J. P. Wimberly, Henry Howell, Roy S. Ritchey, John Lofton, Junior, Frank Peterson, and Max C. Lochridge were then and there employees of the Bureau aforesaid, and then and there engaged in the performance of their duties as such.

Overt Act Two

And in furtherance of said conspiracy and in order to effect the objects thereof, the said defendants did on or about the third day

of February, in the year Nine- Hundred Twenty-three, incite, encourage, and cause the said Mann Carter and the said Will Carter, defendants as aforesaid, to unlawfully, willfully, and knowingly, and without justification, or in defense of their own lives, or to avoid bodily injury to themselves, or in defense of their own homes or families, shoot, kill, and murder the said Max C. Lochridge, an employee of the Bureau aforesaid, and to wound the said Roy S. Ritchey, an employee of the Bureau aforesaid, by then and there shooting the said Max C. Lochridge and the said Roy S. Ritchey with shot-guns, pistols, and other deadly and dangerous weapons to the [fol. 5] Grand Jurors unknown, they, the said Max C. Lochridge and the said Roy S. Ritchey, being then and there engaged in the discharge of their duties as such employees of the Bureau aforesaid, in said County of Echols.

Overt Act Three

And in furtherance of said conspiracy, and in order to effect the objects thereof, said defendants did unlawfully, willfully, and knowingly incite, encourage, and cause the said Mann Carter, the said Will Carter, and the said Fred Carter, defendants as aforesaid, in said County of Echols, to assault and beat the said W. D. Counts, an employee of the Bureau aforesaid, with a deadly and dangerous weapon, to-wit: knucks, which they, the said Will Carter and the said Mann Carter and the said Fred Carter, did then and there have and use upon the person of the said W. D. Counts, who was then and there engaged in the discharge of his duties, said assault being made on and upon the said W. D. Counts, with intent then and there to commit bodily injury upon him.

Overt Act Four

And in furtherance of said conspiracy and in order to effect the objects thereof, the said defendants did, on or about the fifteenth day of June, in the year Nineteen Hundred and twenty-two, cause Wiley Corbett, George Herndon, Rader Carter, Floyd Carter, E. W. Prescott, Mann Carter, Will Carter and Frank Staten to use deadly and dangerous weapons, to-wit: rifles, shotguns, pistols, and other [fol. 6] deadly and dangerous weapons to the Grand Jurors unknown, with intent to commit a bodily injury upon one John Lofton, Junior, and one Frank Peterson, employees of the Bureau of Animal Industry of the Department of Agriculture, then and there engaged in the discharge of their duties as such employees, and who were then and there guarding what is commonly known as the Prime Vat, for the purpose of preventing the destruction of same, said deadly and dangerous weapons being discharged at, towards, and in the direction of the said John Lofton, Junior, and the said Frank Peterson by the said Wiley Corbett, George Herndon, Rader Carter, Floyd Carter, E. W. Prescott, Mann Carter, Will Carter, and Frank Staten, with intent then and there to commit a bodily injury upon them, the said John Lofton, Junior, and the said Frank Peterson, and to pre-

vent and deter the said Lofton and Peterson from discharging their duties; contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the said United States.

Second Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that heretofore, to-wit; on or about the first day of July, in the year Nineteen Hundred twenty, the said Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, Tinker Carroll, J. B. Hicks, W. W. Pennington, H. J. Carter, alias Mann Carter, Fred Carter, Will Carter, Borah Corbett, Floyd Carter, George Herndon, Rader Carter, Wiley Corbett, Frank Staten, E. W. Prescott, Buck Carter, Neely Hires, and Jim Howell, whose respective further given names are to the said Grand Jurors [fol. 7] unknown, hereinafter termed defendants, and others to the Grand Jurors unknown, did, in the County of Echols, within the Southwestern Division of the Southern District of Georgia, and within the jurisdiction of this Court, unlawfully, willfully and knowingly conspire, combine, confederate, and agree together to commit an offense against the United States, that is to say, said defendants did at the time and place aforesaid, and continuously thereafter, on divers dates to the Grand Jurors unknown, up to the finding of this indictment, unlawfully, willfully and knowingly conspire, combine, confederate, and agree to forcibly impede and interfere with R. S. English, H. J. Murphey, W. D. Counts, J. P. Wimberly, Henry Howell, Roy S. Ritchey, John Lofton, Junior, Frank Peterson, and Max C. Lochridge, all employees of the Bureau of Animal Industry of the Department of Agriculture of the United States, in the execution of their, the said employees duties, said employees being then and there engaged under the Bureau aforesaid, in supervising and causing the dipping of cows, bulls, calves, and yearlings for the purpose of preventing the spread of splenetic fever and for the purpose of eradicating from said cattle what is commonly known as the cattle fever tick, by then and there dynamiting and causing to be dynamited, burning, and causing to be burned, cattle dipping vats, and cattle spray pens, which had been sunk, built, and erected in said County, of Echols, said defendants then and there well knowing that the said R. S. English, E. J. Murphey, W. D. Counts, J. P. Wimberly, Henry Howell, Roy S. Ritchey, John Lofton, Junior, Frank Peterson, and Max C. Lochridge, were then and there employees of the Bureau aforesaid, and engaged in the discharge of their duties as [fol. 8] such employees, and that their duties required the use of dipping vats and spray pens.

Overt Act One

And in furtherance of said conspiracy and in order to effect the objects thereof, the said defendants did, on divers dates between July first, in the year Nineteen Hundred Twenty, and the finding and return of this indictment, said dates being to the Grand Jurors un-

known, blow up with dynamite, and other high explosives, to the Grand Jurors unknown, vats and spray pens, commonly known as follows, to-wit: The Prime Vat, the Lister Vat, the Dukes Vat, the Smith Carter Vat, the Wiley Corbett Vat, the J. H. Howell Vat, the William Carter Vat, the J. A. Copeland Vat, the Prevaux Vat, the Morse-Carter Vat, the Alderman Vat, the Ritter Vat, the King Vat, the Statenville Vat, and Williams Vat; and in furtherance and in pursuance of said conspiracy, did burn and cause to be burned the Smith-Carter Spray Pen, the Duke Spray Pen, the Williams Spray Pen, and the William Carter Spray Pen.

Overt Act Two

And in furtherance of said conspiracy and in order to effect the objects thereof, the said defendants did unlawfully, willfully, and knowingly encourage, incite, and cause one Neely Hires and one Floyd Carter to burn what was commonly known as the Smith-Carter Cattle Spray Pen, which said Pen was then and there situate and located in said County of Echols, which said pen was burned on or about the fifteenth day of June, in the year Nineteen Hundred and Twenty-two.

[fol. 9] Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

Charles L. Redding, Assistant United States Attorney. E. T. Hines, Foreman of the Grand Jury.

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
GEORGIA, SOUTHWESTERN DIVISION

No. 688

UNITED STATES OF AMERICA

vs.

OSCAR THORNTON, SHAMIE THORNTON, ISMAN THORNTON, WESLEY McDonald, Waverly McDonald, Tinker Carroll, J. B. Hicks, W. W. Pennington, H. J. Carter, alias Mann Carter; Fred Carter, Will Carter, Borah Corbett, Floyd Carter, George Herndon, Rader Carter, Wiley Corbett, Frank Staten, E. W. Prescott, Buck Carter, Neely Hires, and Jim Howell.

Indictment for Conspiracy

DEMURRER TO INDICTMENT—Filed Feb. 27, 1924

Come now the defendants in the above stated case, upon arraignment and before pleading to the merits, and demur to the first count

in the indictment therein, and move that the same be quashed upon the following grounds, to-wit:

[fol. 10]

1

Because no crime against the laws of the United States is charged in said County against these defendants, or either of them.

2

Because it appears from the allegations in said count that the duties with which the employees of the Bureau of Animal Industry, whose names are set out therein, were charged, and in the performance of which they are alleged to have been engaged at the time the several overt acts are alleged to have been committed, to-wit: Supervising of and causing to be dipped cattle, were not duties with which they were legally charged as such employees of the Bureau of Animal Industry, nor were they such duties as they could legally perform as such employees.

3

Because in said count the defendants are charged with having conspired to commit an offense against the United States, and that in furtherance of the conspiracy, they committed the various overt acts therein set forth, for the purpose of deterring and preventing the alleged employees of the Bureau of Animal Industry of the United States Department of Agriculture from discharging their duties as such, to-wit: Causing cattle to be dipped for the purpose therein alleged, whereas, under the law, said alleged employees of the Bureau of Animal Industry were not charged with such duty and could not legally perform the same in the State of Georgia.

[fol. 11]

4

Because there is no law vesting in said alleged employees of the Bureau of Animal Industry of the United States Department of Agriculture, as such, authority to perform the duties with which it is alleged they were charged, and in the performance of which it is alleged they were engaged at the time the several overt acts were committed for the purpose in said count set out.

5

Because it is not alleged in said count that the State of Georgia ever accepted rules and regulations for the suppression and extirpation of contagious, infectious and communicable diseases among live stock, prepared by the Secretary of Agriculture and by him certified to the executive authority of said State, or that the plans and methods for the suppression and extirpation of said diseases heretofore adopted by the State of Georgia have been accepted by the Secretary of

Agriculture. Nor is it alleged in said count that the Governor, or other properly constituted authority of the State of Georgia, has signified a readiness to co-operate for the extinction of any such disease, in conformity with the provisions of the Act of Congress of May 29th, 1884, entitled "An Act for the Establishment of a Bureau of Animal Industry," etc., and especially of section three thereof. Therefore, it is not shown by the allegations in said count that the alleged employees of the Bureau of Animal Industry had any right or authority to supervise the dipping of cattle, or to cause cattle to be dipped in said State, for the purpose in said count set out.

[fol. 12]

6

Because said count of said indictment, and the matters and things therein set forth, do not show or state that the cattle, the dipping of which the employees of the Bureau of Animal Industry of the United States Department of Agriculture were supervising and causing to be done in order to prevent the spread of splenic fever among cattle, and in order to eradicate and remove from them what is commonly known as the cattle fever tick, were subjects of interstate commerce, or that said cattle had in any way become subject to the supervision, or control or power of Congress under the Constitution.

7

Because the Act of Congress, approved May 29th, 1884, entitled "An act for the Establishment of a Bureau of Animal Industry," etc., under and by virtue of which the employees of the Bureau of Animal Industry of the United States Department of Agriculture are alleged to have been charged with the duty of supervising the dipping of and causing to be dipped cattle, and under and by virtue of which said employees were supervising the dipping of and causing to be dipped the cattle mentioned in said indictment, is unconstitutional, in that said act, and especially section three thereof, attempts to give to the Secretary of Agriculture the authority to spend so much of the money appropriated by said act as may be necessary in such investigations and in such disinfections and quarantine measures as may be necessary to prevent the spread of disease, to-wit: "contagious, infectious and communicable diseases" among cattle from one State or Territory into another, whereas, the State of Georgia did not delegate to the United States by the Constitution any right of supervision or any power over the work of disinfection and quarantine of cattle within the State of Georgia, except when said cattle shall have, at any time become the subjects of interstate commerce, and said act seeks to delegate to the Secretary of Agriculture, and through him to the employees of the Bureau of Animal Industry of the United States Department of Agriculture, rights and powers and duties, which were reserved to the States and to the State of Georgia, and were not delegated as aforesaid to the United States or to the Congress thereof, or to any of the officers who derive their

[fol. 13]

authority and exercise their offices and perform their duties under and by virtue of any law passed by the Congress of the United States.

8

Because the Act of Congress, approved May 29th, 1884, entitled "An Act for the Establishment of a Bureau of Animal Industry," etc., which act by section three thereof gives to the Secretary of Agriculture authority to expend so much of the money appropriated by said act as may be necessary in such investigations and in such disinfection and quarantine measures as may be necessary to prevent the spread of diseases, to-wit: "contagious, infectious and communicable" diseases among cattle from one State or territory into another, does not vest in the Secretary of Agriculture of the United States, or in the Bureau of Animal Industry mentioned in said count of said indictment authority to appoint agents and employees and to charge them with the duty of supervising and dipping and causing to be dipped cattle, in order to prevent the spread of splenic fever among cattle, and in order to eradicate and remove from tick [fol. 14] infected areas what is commonly known as the cattle fever tick, and therefore the employees of the Bureau of Animal Industry of the United States Department of Agriculture, named and mentioned in said count of said indictment, were not, at the time mentioned, in said count of said indictment when the defendants are alleged to have committed the offenses charged therein, officers or employees of the Bureau of Animal Industry of the United States Department of Agriculture, engaged in the execution of their duties as such legally delegated to them nor was said acts of the defendants charged in said count of said indictment committed on account of the execution of their legally delegated duties.

And upon arraignment and before pleading to the merits, the defendants demur to the second count in said indictment, and move that the same be quashed, upon the following grounds, to-wit:

1

Because no crime against the laws of the United States is charged in said count against these defendants, or either of them.

2

Because it appears from the allegations in said count that the duties with which the employees of the Bureau of Animal Industry, whose names are set out therein, were charged, and in the performance of which they are alleged to have been engaged at the time the several overt acts are alleged to have been committed, to-wit. Supervising of and causing to be dipped cattle, were not duties with which they are legally charged as such employees of the Bureau of Animal Industry, nor were they such duties as they could legally perform as such employees.

3

Because in said count the defendants are charged with having conspired to commit an offense against the United States and that in furtherance of the conspiracy they committed the various overt acts therein set forth, for the purpose of deterring and preventing the alleged employees of the Bureau of Animal Industry of the United States Department of Agriculture from discharging their duties as such, to-wit: Causing cattle to be dipped for the purpose therein alleged, whereas, under the law, said alleged employees of the Bureau of Animal Industry were not charged with such duty and could not legally perform the same in the State of Georgia.

4

Because there is no law vesting in said alleged employees of the Bureau of Animal Industry of the United States Department of Agriculture, as such, authority to perform the duties with which it is alleged they were charged, and in the performance of which it is alleged they were engaged at the time the several overt acts were committed for the purpose in said Count set out.

5

Because it is not alleged in said count that the State of Georgia ever accepted rules and regulations for the suppression and extirpation of contagious, infectious and communicable diseases among the live stock, prepared by the Secretary of Agriculture and by him [fol. 16] certified to the executive authority of said State, or that the plans and methods for the suppression and extirpation of said diseases heretofore adopted by the State of Georgia have been accepted by the Secretary of Agriculture. Nor is it alleged in said count that the Governor, or other properly constituted authority of the State of Georgia, has signified a readiness to co-operate for the extinction of any disease, in conformity with the provisions of the Act of Congress of May 29th, 1884, entitled "An Act for the establishment of a Bureau of Animal Industry," etc., and especially of section three thereof. Therefore it is not shown by the allegations in said count that the alleged employees of the Bureau of Animal Industry had any right or authority to supervise the dipping of cattle, or to cause cattle to be dipped in said State for the purpose in said count set out.

6

Because no duty with which the alleged employees of the Bureau of Animal Industry were legally charged, required the use by them of dipping vats and spray pens.

Because said count of said indictment and the matters and things therein set forth, do not show or state that the cattle, the dipping of which the employees of the Bureau of Animal Industry of the United States Department of Agriculture were supervising and causing to be done in order to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from them what is commonly known as the cattle fever tick, were subjects of interstate commerce, or that said cattle had in any way become subject to the supervision, or control or power of Congress under the Constitution.

[fol. 17]

Because the Act of Congress, approved May 29th, 1884, entitled "An Act for the establishment of a Bureau of Animal Industry," etc., under and by virtue of which the employees of the Bureau of Animal Industry of the United States Department of Agriculture are alleged to have been charged with the duty of supervising the dipping of and causing to be dipped cattle, and under and by virtue of which said employees were supervising the dipping of and causing to be dipped the cattle mentioned in said indictment, is unconstitutional, in that said act, and especially section three thereof, attempts to give to the Secretary of Agriculture the authority to spend so much of the money appropriated by said act as may be necessary in such investigations and in such disinfections and quarantine measures as may be necessary to prevent the spread of diseases, to-wit: Contagious, infectious and communicable diseases" among cattle from one State or territory into another, whereas, the State of Georgia did not delegate to the United States by Constitution any right of supervision or any power over the work of disinfection and quarantine of cattle within the State of Georgia, except when said cattle shall have, at any time, become the subjects of interstate commerce, and said act seeks to delegate to the Secretary of Agriculture, and through him to the employees of the Bureau of Animal Industry of the United States Department of Agriculture, rights and powers and duties, which were reserved to the States and to the State of Georgia, and were not delegated as aforesaid to the United States or to the Congress thereof, or to any of the officers who derive their authority and exercise their offices and perform their duties under [fol. 18] and by virtue of any law passed by the Congress of the United States.

Because the Act of Congress, approved May 29th, 1884, entitled "An Act for the Establishment of a Bureau of Animal Industry," etc., which act by section three thereof gives to the Secretary of Agriculture authority to expend so much of the money appropriated by said Act as may be necessary in such investigations and in such disinfection and quarantine measures as may be necessary to prevent the spread of diseases, to-wit: "contagious, infectious and communicable" diseases, among cattle from one State or territory into another,

does not vest in the Secretary of Agriculture of the United States, or in the Bureau of Animal Industry mentioned in said count of said indictment authority to appoint agents and employees and to charge them with the duty of supervising and dipping and causing to be dipped cattle, in order to prevent the spread of splenic fever among cattle, and in order to eradicate and remove from tick infected areas what is commonly known as the cattle fever tick and therefore the employees of the Bureau of Animal Industry of the United States Department of Agriculture, named and mentioned in said count, of said indictment, were not, at the times mentioned in said count of said indictment when the defendants are alleged to have committed the offenses charged therein, officers or employees of the Bureau of Animal Industry of the United States Department of Agriculture, engaged in the execution of their duties as such legally delegated to them, nor were said acts of the defendants charged in said count of said indictment committed on account of the execution of their legally delegated duties.

[fol. 19] And upon their several grounds of demurrer, defendants pray the judgment of the Court that said indictment and each count thereof be quashed.

E. K. Wilcox, Franklin & Langdale, Wilson & Bennett,
Branch & Snow, Attorneys for Defendants.

After argument the above demurrer is overruled, this February 27th, 1924.

Wm. H. Barrett, Judge.

IN UNITED STATES DISTRICT COURT

PLEA OF NOT GUILTY

The defendants, Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, Tinker Carroll, J. B. Hicks, W. W. Pennington, H. J. Carter, Fred Carter, Will Carter, Bora Corbett, Floyd Carter, George Herndon, Rader Corbett, Wylie Corbett, Frank Staten, E. W. Prescott, Buck Carter, Neely Hires and Jim Howell, waives arraignment and pleads not guilty in open Court, this 27th day of February, 1924.

Wilson & Bennett, Franklin & Langdale, E. K. Wilcox,
Branch & Snow, Attorneys for Defendants.

[fol. 20] IN UNITED STATES DISTRICT COURT

VERDICT

We the Jury find the following defendants guilty: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, and Tinker Carroll.

We the Jury find the following defendants not guilty: Fred Carter, Will Carter.

We the Jury find the following defendants not guilty: Fred Carter, Floyd Carter, Rader Carter, Buck Carter, J. B. Hicks, W. W. Pennington; Borah Corbett, George Herndon, Wiley Corbett, Frank Staten, E. W. Prescott, Neely Hires, Jim Howell.

Samuel Purvis, Foreman.

This March 12th, 1924.

IN UNITED STATES DISTRICT COURT

JUDGMENT AND SENTENCE

Whereupon, it is considered, ordered, and adjudged by the Court, that the said defendants, Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, each, be imprisoned in the common jail of Lowndes County, for the term of six months, or until otherwise discharged by law.

In open Court, this the 13th day of March, 1924.

Wm. H. Barrett, United States Judge.

[fol. 21]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FILED—March 13, 1924

Certain of the defendants in the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, having been convicted, it is now, for good cause shown, ordered by the Court that the time in which said named defendants should prepare and present for approval and filing a bill of exceptions in said case, be, and the same is hereby extended until the 17th day of May, 1924, and that such bill of exceptions may be presented to the undersigned Judge of said Court, wherever he may be at the time.

Granted in open Court, this March 13th, 1924.

Wm. H. Barrett, U. S. Judge.

[fol. 22]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING SUPERSEDEAS—Filed March 13, 1924

Certain of the defendants in the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald,

Waverly McDonald and Tinker Carroll, having been convicted, and an order having been granted allowing them until the 17th day of May, 1924, to present for approval and filing a bill of exceptions in said case, it is now, upon motion of counsel for said named defendants, ordered that a supersedeas be and the same is hereby granted, and that sentences imposed be stayed until further order. In the meantime said defendants may be discharged upon giving bonds, with good security, to be approved by the Clerk of this Court, or one of his deputies, in the amounts set opposite their names below, to-wit:

Shabie Thornton	\$1,000
Oscar Thornton	"
Inman Thornton	"
[fol. 23] Wesley McDonald	"
Waverly McDonald	"
Tinker Carroll	"

conditioned for the appearance of said defendants to abide the final judgment of the Court in said case.

Granted in open Court, this 13th day of March, 1924.

Wm. H. Barrett, U. S. Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted.]

ORDER EXTENDING TIME—Filed May 17, 1924

For good cause shown, it is ordered by the Court that the time heretofore allowed certain of the defendants in the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, in which to prepare and present for approval and filing, a bill of exceptions in said [fol. 24] case, be, and the same is hereby further extended until the 17th day of June, 1924, and that such bill of exceptions may be presented to the undersigned Judge of said Court wherever he may be at the time.

Granted in open Court, this May 15th, 1924.

Wm. H. Barrett, U. S. Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Filed June 19, 1924

For good cause shown, it is ordered by the Court that the time heretofore allowed certain of the defendants in the above stated case,

to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, in which to prepare and present for approval and filing, a bill of exceptions in said case, be, and the same is hereby further extended until the 30th day [fol. 25] of June, 1924, and that such bill of exceptions may be presented to the undersigned Judge of said Court wherever he may be at the time.

Granted in open Court, this June 16th, 1924.

Wm. H. Barrett, U. S. Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

Bill of Exceptions

CAPTION

Be it Remembered, That the above stated case came on for trial, the Honorable William H. Barrett, Judge of said Court, presiding, at the December Adjourned Term 1923, to-wit: On February 27th, 1924, F. G. Boatright, United States Attorney, and Charles L. Redding, Assistant United States Attorney, appeared for the Government, and Franklin & Langdale, Branch & Snow, Wilson & Bennett and E. K. Wilcox appeared for the defendants. [fol. 26] Upon arraignment, and before pleading to the merits, the defendants filed a demurrer to the indictment, and to the several counts therein, which, after argument was, upon consideration, overruled. To the order and judgment of the Court overruling said demurrer the defendants excepted, and their exception was duly noted and allowed.

After the demurrer was overruled, the defendants entered a plea of not guilty, and a jury having been duly empaneled, the following proceedings were had, to-wit:

S. J. HORNE, being first duly sworn as a witness for the Government, testified as follows:

By profession I am a veterinary, and my official position is that of inspector in charge of tick eradication in Georgia and Florida. I have not my commission with me. I have been employed by the Government since March, 1915. I am paid by the Department of Agriculture of the United States. I have the entire State of Georgia in charge, and my headquarters are in Atlanta. I was put in charge of the State in September, 1921, and have had connection with the work in Echols County, Georgia. In the Fall of 1921 there was not much of anything done. In the Spring of 1922 we started the construction of vats. There was a kind of campaign of education carried on there prior to the time I took charge of it. After I took charge, we sent men in there to locate vats at the places most suitable and desirable to them. We first sent Dr. Applewhite, and later

sent Mr. Jeter. They were instructed to visit the people. They were under my supervision, and I work under the supervision of the Chief of the Bureau of Animal Industry in Washington. The first [fol. 27] thing they were to do was to get the vats located and advise the people what was necessary to accomplish tick eradication, the dipping of cattle every fourteen days, under supervision, and for the employment and appointment of local men through the board of commissioners. By the words under supervision, I mean that the cattle shall be disinfected under the men directing the work. The actual work of dipping the cattle is accomplished by county and state inspectors, under the supervision of government inspectors. The Government men are not present at every dipping, but they are present at all they can get to. The purpose in having Government men present is to gain knowledge of what has been accomplished, so that the counties or areas doing systematic work can be released from quarantine. The Government men also supervise the mixing of the liquid; it is their duty to see that the vats are properly charged with an arsenical preparation approved by the Government. The purpose of dipping cattle is to eradicate ticks. Ticks are a parasite that transmits a disease known as splenic or Texas fever. An investigation was made because of the fact that cattle movements from the southern states to the northern markets invariably brought on a disease among cattle in those states that they did not have except immediately following these cattle movement from the south. This investigation by the Bureau of Animal Industry disclosed that the tick was the cause, and at that time a quarantine was placed over all the territory where ticks lived,—a Federal quarantine prohibiting the movement of cattle from the infected area into a free area. The first work done in Echols County was the year prior to my being put in charge, and I did not attend any public gatherings [fol. 28] at all. In March, 1922, we had about 12 or 13 vats dynamited at one time in Echols County. That was after I took charge there. All the vats were dynamited except those on the Florida line. This was repeated in April, and in May we decided not to build any other vats but to use spray pens. These spray pens were burned, and we attempted to rebuild the vats in June. As fast as they were rebuilt, they were dynamited, and that took place up until July, 1922. These vats were four or five miles apart, and covered the county West of the Apalaha River. We started the work on the West side of Echols County so as to protect Lowndes County, and were never able to get across the river. As fast as we could build vats on the Lowndes County line, they would be destroyed. The vats that were built on the East side of the river were built by farmers themselves, and they were not dynamited up until June or July, 1922. Lowndes County had done eradication work for several years, and we started on the line of that county so as to protect them. From the time I took charge until July, 1922, there were probably 50 to 75 vats destroyed,—they were originally built, then rebuilt and then dynamited again.

Cross-examination:

It was in September, 1921, that I assumed control of Echols County, Georgia, so far as my department was concerned. Not all of the vats that were destroyed were constructed by the county authorities of Echols County, there were two or three that were constructed by private individuals. This county had been determined to be a tick infested area by my predecessor and had been quarantined against interstate movements of cattle prior to the time [fol. 29] I took charge. I took into Echols County early in August, 1922, all the employees of the Bureau of Animal Industry whose names are set out in the indictment except two. The work of tick eradication was not in progress at that time; an attempt had been made and vats had been constructed, but they were dynamited and there was none at that time. Some dipping had been done prior to that time. Some private vats had been constructed and some county vats as well. Lofton and Peterson, local parties, were employed, I think, some time in the early Spring of 1922 by the Bureau of Animal Industry. They were not on this job in August at all; they were range riders and guarding vats. After these other gentlemen came and the McKinnon vats could be constructed, they were in the discharge of duties as range riders in Echols County. These men did not gather up cattle so much as they did supervising and dipping and making inspection of the range to see that they had all been dipped. On these inspections of the range, if they found one that wasn't paint marked, it was driven up by them. As the cattle were dipped, they were marked with paint so as to distinguish between those that were dipped and those that were not. Seizure and impounding cattle was carried on in co-operation with the State Inspector when it was found that they had not been dipped. It was carried on in connection with the two.

Q. They did the actual work of seizure?

A. Yes, sir; they did assisting with the other. I judge that they also at times performed the duties of notifying the owners of the cattle when they were impounded. Probably one of these men, Wimberly, was also employed by the State up to November, 1922. English, Murphy, Counts, Howell, Richy and Lockridge held com-[fol. 30] missions from the State Veterinarian, but received no pay; they received their compensation from the United States Department of Agriculture. I think they received \$1680.00 per annum. I do not know whether the commissions issued to these men by the Bureau of Animal Industry are in Court or not.

Redirect examination:

These Government men that I have referred to as being range riders were directed to make inspections as to whether or not all the cattle were being dipped, and at time they were engaged in superintending and dipping cattle. The state men went with them; it was the duty of the state men to drive up the cattle, if any one, in the event they saw tick infested cattle or cattle that had not been

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dipped. The Government men were charged with that duty only in assisting the state men. The Federal Government does not get out any notices directing the dipping of cattle. I am not certain, but I think Mr. Jeter was commissioned by the State as well as by the government. He was acting for the state. He made the request that the State commission him in order that he could carry on the co-operative work. He had supervision of all the men, Government and State, in that particular county.

Recross-examination:

My instructions to these Bureau of Animal Industry men to discharge the duties of range riders in Echols County were based on instructions to me from the Bureau,—written instructions to me from the Chief of the Bureau. They were not instructed to act as range riders, they were agents, instructed to ride the range and inspect the cattle,—by instruction through a letter from the Washington office to my office. I have not the letter with me, it is in the files in Atlanta. I could not answer the question as to whether there is any rule, general or special, by the department to instruct these agents to do the work which I have described as a range rider. Those are the rules and regulations there (indicating). I do not know whether those are all the rules that have been promulgated by the Department or not.

T. H. Applewhite, being first duly sworn as a witness for the government, testified as follows:

I am a veterinary, employed by the Bureau of Animal Industry of the Department of Agriculture, and am stationed at Valdosta. I am supervising Inspector of Tick Eradication, and as such have charge of the work in Echols County, Georgia. I have had charge here since the work started in the Spring of 1922. When I first went into Echols County, I found two vats there, if I remember right,—in the southwestern corner of the county. I noticed that approximately eight or ten vats had been destroyed. I do not recall how many vats have been destroyed since I went into the county, but several of them. At first we rebuilt several vats and they were destroyed, and then we built them again and they were destroyed. Because of this, we quit building them and went to spraying, fixing spraying pens and spraying the cattle, and when we did this, the spray pens were burned. I know just a few of the defendants in this case. I have never been present at any vat when any trouble occurred.

Ex. 32] Cross-examination:

I understood the working of the State wide tick eradication Act of 1918. When Dr. Bahnsen, under the provisions of that Act, called upon the county commissioners of Echols County to put on

the work there, a number of citizens of the county endeavored to get the commissioners not to undertake it. There was one meeting that I recall for that purpose before the Commissioners undertook to put on the work of tick eradication. In this meeting, I made a talk after Mr. Corbett did. In his talk to that gathering of people Mr. Corbett advocated tick eradication. In that talk, he said that he had been accused of blowing up vats, but, thank God, he was not accused of blowing them all up,—I don't remember that it was said in a jocular way. On one occasion when I met Mr. Carter in front of my house, I explained to him that the local inspectors superintended the dipping of cattle, and that it was his policy to paint mark all cattle going through the vats. That was my instructions. We usually ride the range for the first, second and third days after dipping, and we don't have much trouble about cattle licking the paint off, when it is put on. The only complaint Mr. Carter made on that occasion was about some cattle being taken up that had been dipped. The majority dipped all their cattle, all that we had a record of. After these men named in this indictment were sent there, Mr. Eugene Carter was one of the State employees there. His position was that of inspector and range rider. He supervised the dipping of cattle and rode the ranger after dipping days to ascertain whether or not all cattle had been dipped. John H. Touchstone was another state inspector there after August, 1922, and his duties were the same as Mr. Carter's. The duty of these gentlemen named and described in this indictment as employees [fol. 33] of the Bureau of Animal Industry was to assist the state employees in carrying on the work,—they all did practically the same thing, more or less. Mr. Eugene Carter did not stay in the camp with them all the time, but Mr. Touchstone did. These employees of the Bureau of Animal Industry did not as a rule actually assist the owners in dipping cattle when they were brought to the vats, but they did that occasionally. The people that brought the cattle would dip them, and the inspectors would do the inspecting and fixing the solution in the vats and the paint marks. The notices or orders to dip were served by the inspector, Mr. Jeter. The range riders impounded the cattle and was found on the range that did not bear paint marks. These range riders included the employees of the Bureau of Animal Industry and the state men.

Q. Did you state that the State men did the impounding?

A. Yes, and they were assisted by the Bureau men. I did not mean to say that Dr. Jeter served all the notices, neither did he sign them all. I am not in position to say who signed and served the others. I am not in position to tell you whether these inspectors employed by the Bureau of Animal Industry signed some of these notices and actually served them or not, because I never remember being along when the notices were served.

Redirect examination:

I do not know of any cattle going through the dipping pen in Echols County without being paint marked. It was in August, 1922,

we carried these men down there and established a camp, called Mc-[fol. 34] Kinnon Camp where the men lived in tents. We put the vat in at that camp because we could not get the cattle disinfected any other way. The reason for that was because of the destruction of the vats we built, or the county built, and because all the spray pens which we constructed has been destroyed. This vat was built around 25 yards from where the men slept. Four men stayed awake at night in order to protect the dipping vat at Camp McKinnon. Sometimes when cattle were brought to the vats the State or Government men, or both, assisted in dipping. That was just the men's voluntary assistance. We conducted the work more as a co-operative business, and tried to do what we could, and in case of any gentleman having trouble with his cattle, we assisted him in rounding them up.

PETER F. BAHNSEN, being first duly sworn as a witness for the Government, testified as follows:

I am State Veterinarian for the State of Georgia, and have been such since the creation of the office in 1910. As state veterinarian I entered into a contract with the Government in reference to tick eradication. This is the contract here (indicating). During the time since 1910, I have had occasion to do tick eradication work in Valdosta, or Lowndes County. My recollection is, we sent Mr. Owens to Lowndes County in 1915 to do some preliminary work, and afterwards two vats were built by private citizens near Valdosta. These were put in to give the people opportunity to dip their cattle and note the difference between cattle that were dipped and those that were not. At that time, 1916, we did not have a statewide tick eradication Act, but we undertook to get each board of com-[fol. 35] missioners to co-operate in tick eradication work by telling them about it and trying to convince them that the work was worth while and would be a help in development of the cattle industry. We got the commissioners of Lowndes County to adopt tick eradication, and subsequently the county built quite a number of vats. The first Government inspector was placed in Lowndes County in 1916. The contract I referred to was entered into June 17, 1915, but we had a previous agreement between the Government and the commissioners of agriculture in 1906. To the best of my recollection, the first vat blowing took place in Lowndes County about 1917, after the state and government were co-operating in the work of tick eradication in Lowndes County. At one time, I employed Borah Corbett to prevent the blowing of dipping vats in Lowndes and Echols Counties, and none were blown for about a year after we hired him. After we discharged him, the vats were blown again. I met Mr. Hicks, one of the defendants, during the time of the General Assembly in 1922. Mr. Hicks was in Atlanta in interest of a Bill to repeal the statewide tick eradication act, and during that time we had quite a few talks. He was bitterly opposed to the tick eradication law and the dipping of cattle,—he stated that

tick eradication in Echols County was impossible and that the people were all against it; that even if they wanted it, it could not be done, and that they would not take up tick eradication work in Echols County whether the law was repealed or not. The Government men in this work are employed by the Government, and under the co-operative agreement they were also given a state commission, and the state men are employed by the State veterinarian, under the provisions of an Act of 1912. The county men are employed by [fol. 36] the county, or at their suggestion, and commissioned as required by law by the State Veterinarian. On behalf of the Government, the men employed in the work in Lowndes and Echols County were employed by Dr. Horne. In the employment of men, Dr. Horne and I work in close co-operative agreement.

Cross-examination:

In carrying on the tick eradication work in Echols county, we were proceeding under the state veterinarian act and other supplemental acts that preceded that. The act of 1918 provides that no regulations previously existing in reference to tick eradication shall be affected by the act, and it only repeals such parts of other acts as are in conflict with the act of 1918, and we were operating under that act and such other previous acts as were not superseded and repealed by it. This work was put on in Lowndes County in 1916 and has continued until the present day. The first vats were blown in Echols county about the middle of the year 1917. I can not state definitely just where the vats were blown in Lowndes County, but it is my impression that they were located on the Echols county line,—I don't know just exactly where all the vats were located, I could not state definitely. Vats were blown in other sections of the county. I could not tell you where the defendants all then lived. Mr. Hicks was in Atlanta some time during the session of the Legislature to which I have referred, several weeks. They were there in interest of a Bill to abolish tick eradication or to amend the law so as to exclude Echols and Clinch counties. There was just a difference of opinion between us, and were discussing the Echols County situations. There were from one to two state [fol. 37] employees in Echols county engaged in this work,—I don't recall that there were more than that except for the past year or two we have had more than that. Since August, 1922, we have had six or seven. I do not recall all of them, many of them I never knew. They were employed as cattle inspectors. Some of them discharged the duties of range riders and some were vat inspectors. When the work of tick eradication was first undertaken, we found it was impracticable to keep tab on cattle that had been dipped and those that had not been, and we had to devise a system in order to check up on these cattle, and after many trials we found that the only practical system was to mark the cattle that had been dipped. After adopting this system, we found that unless we provided ways and means for taking up cattle that had not been dipped, we could not keep up with it and clean up the territory. Then we devised a system of range riding, and these range riders

are required to get the cattle that are on the range that have not been paint marked and bring them to the vat for dipping purposes. These duties are discharged by all the inspectors. I could not say the exact number of government agents or employees of the Board of Animal Industry were kept in Echols County since August, 1922, but between 5 and 8 or 9. They discharged the same duties that my inspectors did.

OSCAR THOMPSON, being first duly sworn as a witness for the Government, testified as follows:

I am employed by the United States Department of Agriculture, Bureau of Animal Industry, and have been so employed for three [fol. 38] years in Lowndes and Echols Counties. I went to work in Lowndes County in July, 1922, and in Echols on May 15, 1923. During the time I was engaged in tick eradication work in Echols County, I was not working with employees of any other Sovereignty. The State of Georgia had employees there, and the Government employees and the State employees were co-operating together. The State employees worked under the supervision of the State Veterinarian. The State men had general direction of the work down there. The State men were supervising all the cattle we took up. The Government men were supervising the work. In August, 1922, Mr. Mann Carter came up to me and said they wasn't going to dip cattle in Echols. That was before I went to work in Echols. He said they had two telegrams from Col. Hicks that day, and they *was* going to build a fence around Echols. I asked him if he didn't think they ought to dip, and he said they *wasn't* going to dip any way.

Cross-examination:

That was during the time Mr. Hicks was in Atlanta trying to get a Bill passed exempting some portion of the law from Echols County. I understood that the telegrams and letter he claimed to have were encouraging. I do not know whether there was any such bill passed or not. He had a newspaper in his hand, but I did not read it. I don't know whether it contained anything about the proceedings of the Legislature or not, and Mr. Carter did not tell me. I don't think that it had passed the Lower House.

[fol. 39] W. D. COXNRS, being first duly sworn as a witness for the Government, testified as follows:

I have been employed by both the State and the Government. The Government paid my salary after the first two days I was employed. I was employed by the Government as an agent in tick eradication. My duties were to enforce the law. I was engaged in riding the range and looking after cattle which had not been dipped. I had occasion to visit Statenville, and while there I saw Mann Carter

and Will Carter several times. I had a difficulty with them on January 8, 1923. Will Carter approached me and asked why I had framed up against him on Christmas night, and I told him I had nothing to do with it. Jim Carter and Will Carter had had an argument at Mr. Eugene Carter's about a dog. I had been up the road and stopped there to get some gas. After I told him I had nothing to do with it, he then brought up about 17 head of cattle we had over at the camp at that time. I told him I was not in the bunch than had taken up the cattle and had nothing to do with it. He was using profanity all the time. Mr. Mann Carter came up and kept calling on his son Fred to get on me and beat me up. I tried to avoid a fight for at least ten minutes, and Will Carter came in and we had three or four licks, and the best I remember he got knocked down; and in the meantime Fred joined in from my back. Mann Carter was standing there all the time with his hands in his pocket; he said, "Get on him and beat him up." Both of them were on me and I was trying to keep them off for five minutes; then we circled around a truck there and Mr. Harris, another Government agent, got off the truck and was coming to where I was, and Mann Carter said [fol. 40] to him, "Get back, this is none of your affair." Then Fred walked up behind me and hit me back of the ear and everything went dark and I hardly remember anything else that happened. We had gone to Statenville that morning to get the mail and for Mr. Harris' trunk. It was not necessary that we get the mail that morning, but we got our official mail at Statenville at that time.

FRANK DANIELS, being first duly sworn as a witness for the Government, testified as follows:

In March, 1922, I passed the Liston Dipping Vat in Echols County. It was about sun down, and I saw Mann Carter, Will Carter, Borah Corbett, Dan Carter and George Herndon. They came there in a Ford car, and I guess they blowed it up,—they got out, and it was blowed up in just a few minutes. They went up to the vat, and then left right away. I could not tell what they were doing. I was about a hundred yards from the vat. I have no doubt as to the identity of these parties; I have been knowing them long enough to know them when I see them. I went up the road about two hundred yards and after it was blowed up I went back to see what had happened. I noticed the boards around the vat and when I first passed and they were all right, they were dry, and when I went back they were wet.

Cross-examination:

I was convicted in Dothan, Alabama, in September, 1922, for car stealing, and am now serving a sentence from five to ten years. [fol. 41] I was also convicted in Lowndes County one for burglary. I was indicted and convicted for hog stealing in Echols County. I ran away from the penitentiary and was a fugitive from justice from November, 1921, to September, 1922.

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Redirect examination:

Lots of vats were blown up over there in the day time. I do not know whether as many were blown up in the day time as at night or not. I was an escaped convict at the time, but I was not afraid.

J. C. JETER, being first duly sworn as a witness for the Government, testified:

I am a Government employee, with the Bureau of Animal Industry. I have been at work in Echols County since April 19, 1922, as supervisor in charge of the work. My duties were to assist the state's men to enforce the law getting the cattle dipped. I saw the cattle being summoned out and to the State and county men getting the cattle dipped. I would go to the vat and see that the cattle were dipped, just to see that it was done. It was a part of my duties. I went around to all the vats. I mixed and mingled with the people and talked with them and tried to get them to co-operate in cattle dipping. I know Mann Carter, Borah Corbett, the Thornton boys, the McDonald boys, Tinker Carroll, Dr. Prescott, Sheriff Pennington, Mr. Hicks, the other Mr. Corbett and Rader Carter and Wiley Corbett. I have talked with Mr. Mann Carter relative to cattle dipping and this law. The first talk that I recall was at the Smith Carter vat. Mr. Carter was summoned to bring his cattle to the Smith Carter vat and he didn't bring them; so I went to him and asked him if he was not going to bring his cattle; and he [fol. 42] said he was not; that he was not going to dip a damn one until he had to. Mr. Hicks came to me at one time and wanted to know if he and Dr. Prescott could get on the Federal payroll as under cover men; they didn't want the people to know they had a place with the Government; and they said they could handle the situation and get the people to dip their cattle. I know where the Prine vat was. It was dynamited. There were some guards there at the Prine Vat and a bunch of fellows came up there and had some shooting, and two of the men came to me and told me about it. I went to Sheriff Pennington and told him we had trouble at the Prine vat and wanted him to go over and see if he could catch the people that were there and arrest them. He said his car was out of commission, and I finally told him I could carry him in my car and he agreed to go and we went over and of course the people had gone, their cars had gone, and the Sheriff said he could not do any thing facing up the cars, as there were so many cars alike. I insisted upon his trying, because one of the tires on the rear of one car was smooth and the other was a tread tire, but he would not go.

Cross-examination:

I do not think that Oscar Thornton, Shady Thornton, Inman Thornton, Waverly McDonald, Wesley McDonald or Tinker Carroll, who are defendants in this case, owned a cow. I held a commission

from the Bureau of Animal Industry and also from the state. I had charge of the officers that had charge of the serving of dipping notices. I did not always sign the notices,—they signed them themselves, the State and Federal men. I do not think those employees [fol. 43] whose names are set out in the indictment, such as Counts and Lockridge and Howell, signed and served notices for me,—they may have, they could have done it. The county men would sign them; the state men, such as Hammock, he was one of the inspectors. The inspectors employed by the county commissioners, with the approval of Dr. Bahsen, and these government men whose names are set out in this indictment, all performed the same duties. This batch of papers here are dipping notices signed and sent out by me. These notices were served by these Government men as well as by the State men. Similar notices were sent to cattle owners.

R. S. ENGLISH, being first duly sworn as a witness for the Government, testified as follows:

I am an employee of the Government in the capacity of Agent, Tick Eradication, Bureau of Animal Industry. The camp known as Camp McKinnon was shot into in Echols County. There was seven or eight people in the camp, in tents, including myself. It was the latter part of August or first of September, 1922. The camp is located in the forks of the Statenville and Valdosta road and the Statenville and Lake Park road. The Lake Park road comes from the West and the Valdosta road from the North. On Sunday afternoon, the latter part of August or first of September, between sundown and dark, I was in the field just in the rear of the camp about one hundred yards, I suppose, in the rear of the tents. I heard a pistol shot down the Lake Park road, in the direction of Lake Park, and being Sunday it was something unusual to hear a shot on Sunday. I stopped to listen a few seconds and heard a car running, and in a few more seconds I heard people hollering. They came on down the road. When I first heard them I could not tell what they were [fol. 44] saying. That road comes about 200 yards south of the camp. When the car got opposite the camp, I could distinguish what was being said. There was hollering and cursing at the top of their voices. It seemed to be a Ford car, but I could not tell how many men were in it, it seemed to be full. From the sound of the voices, they were all hollering and screaming at the top of their voices and cursing and using profanity in regard to us. The cursing was being used directly in regard to we men in the camp; they said the "cow dipping bunch," and used profanity. The car continued down the road to where another little by-road crosses the Lake Park road and goes by the home of Barney Guest, about half mile below the camp. Afterwards the car came back by the camp, and when they returned by the camp they fired into the camp. I do not remember but two shots; after we returned the fire, I don't know how many they fired after that. The fire was in our direction, I heard the bullets. I have heard bullets before, in the war. They

struck the oaks in the camp. We were right among the oaks,—the camp was in an oak grove.

Cross-examination:

The Statenville and Lake Park road runs East and West, and these men approached from the West the first time. The first shot I heard, they were about a mile from the camp. They did not fire into the camp as they went East in the direction of Guest's house. When they first passed they disturbed nobody at the camp, except by what they said. I do not know how many men were in the car, or who fired the shots, or who they were. I am not sufficiently experienced to tell what sort of pistol it was. There were four men in the camp [fol. 45] that returned the fire, including myself; we were firing automatic rifles. We shot about forty times, or I did, I don't know how many times the other three shot. That was about 9 o'clock at night. We had a number of guns in the camp. We sometimes carried side arms, and sometimes shot guns. We carried them on the range when gathering cattle or inspecting cattle, and carried them to Statenville when we went there. We went to private homes to see about the discharge of our duties and to serve dipping notices, and when we did we carried side arms. My duties were simply as a range rider, to assist the state authorities in inspecting cattle on the range. I rode the range, inspected cattle and guarded dipping vats. I also served dipping notices. My purpose in inspecting cattle on the range was to see that they had been dipped.

Redirect examination:

The men were armed for self-protection. A number of things had occurred; vats had been dynamited, and there had been shooting at certain vats,—the Prine vat, I believe. We realized that our lives were in danger, from having heard threats gathered from different sources, and from hearing people talk. We understood that the people down in Echols county were bitterly opposed to dipping, and our lives would be in danger if we undertook tick eradication. No threats had been communicated directly to me.

BEN BOHANNON, first being duly sworn as a witness for the Government, testified as follows:

I live down close to what was known as Camp McKimmon; it isn't far, two or three hundred yards, I think. I remember the occasion [fol. 46] when the camp was shot up, when there was shooting at the camp. I was coming across the road, down back of the camp. I heard the shooting, it went like pistol or rifle. I don't know which. I do not know where the shots came from, but it sounded like they came from the back seat of a car. Oscar Thornton, Inman Thornton, Shabie Thornton, Tinker Carroll, Wesley McDaniel and Waverly McDaniel were in the car. I don't know whether the name is Mc-

Daniel or McDonald,—they called them McDaniel. I have known them a good while, and those are the men, Wesley and Waverly McDonald. I know all of them, and they are the ones I have named. They were hollering and cussing in the car, going toward the camp. They went by the camp and then came back. I wasn't very far away from them. They were in an old Ford, with the top left back. Some of the Thorntons own such a car. The car went by the camp and later returned; I don't know how long it was gone, but not long.

COUNCIL BOHANNON, being first duly sworn as a witness for the Government, testified as follows:

I am a son of Math Bohannon. I remember the time the shooting took place at the camp. I heard the car pass the first time, but I was too far away to see it. I could hear them, and could understand some of the cursing, and heard some pistol shots, but do not remember how many shots I heard. I could see a little of the car as it came back by the camp, and I could hear the hollering. I had just gone to bed, and I went to putting on my clothes, but they had passed [fol. 47] before I could see any thing but the light. The first shooting I heard as it came back was from the car, there was five shots fired together, and the only shooting I heard after that was from the camp. It seemed to me that the first shots were fired from a pistol.

Mrs. LAURA BOHANNON, being first duly sworn as a witness for the Government, testified as follows:

I am the wife of Math Bohannon, and live near Camp McKinnon. I remember the occasion of the shooting into the camp, and saw an automobile pass the house. Before the car came along I could hear the boys, and could hear what they said,—they were cursing. It sounded to me like they were cursing the boys at the camp. I estimated the profanity to be *might* bad, and I thought at the time it was some drunk folks. I heard a pistol or rifle shots, I don't know how many, but I counted five when they came along back. The best I could tell the car was full, but I was not close enough to tell who they were. I did not recognize any of them but the Thornton boys and Tinker Carroll, the others I did not know. I know the names of the Thornton boys, Shabie, Oscar and Inman and I did not really recognize them, but my husband did. I did recognize Shabie Thornton and Inman Thornton, and I had seen that car in their possession before. The five shots were fired as they came along back; that is the reason they shot from the camp. The shots from the car were fired first, I saw the flash of them. It was dark and I could not tell who fired the shots, but the best I could tell it was from the rear seat. Judging from the flash of the pistol, it was pointed as near toward the camp as it could.

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[fol. 48] MATTHEW BOHANNON, being first duly sworn as a witness for the Government testified as follows:

I remember the occasion when camp McKinnon was shot up. I was looking at the firing from the car. When I first heard the car, it was coming from the direction of Lake Park and going toward Statenville. I judged it to be about a quarter of a mile away. There was a right smart hollering and cursing, like somebody might be drinking. I had started to look after my cows, and I stopped and saw them pass the road. I then went on and they overtook me near the camp. They fired the pistol back toward Lake Park, and then after they turned to go in the direction of Mr. Saul's, they fired a few more shots. After they had gone in the direction of his house, a car came back with the same kind of racket and cursing. I could not tell which one was cursing. They were cursing at the camp men. They went on to say they would shoot their lanterns out, and when they made that remark, one of the men from the camp said, "Why don't you do it?" When I first saw them, they were right at me, the car mighty near struck me as I turned out of the road for them. In that car there were the Thornton boys, two of Mr. McDonald's boys and one of the Carroll boys. Those are the six men I saw in the car.—Inman Thornton, Shabie Thornton, Oscar Thornton, Waverly McDonald, Wesley McDonald and Tinker Carroll. After they passed me and I recognized them, they went into the direction of Mr. Saul's and then they returned. As they came back, it was between eight and nine o'clock, I heard the same racket,—I do not say it was these same boys that came back, but it was the same kind of racket and abusing of the camp and threatening. They used the same kind of language coming back they did as they went by the first time. When they came along back, I [fol. 49] had just laid down, and I got up and went out on the shed, and I heard them cursing again and repeating that they would shoot their lights out, and then some one called from the camp and said, "Well why don't you do it?", and at that time the reports from the rifles and pistols commenced. The firing started from the automobile first, and to my best recollection there were four or five of these shots, and then right away the men at the camp began firing. I have talked with Wesley McDonald one time since then, and he said that the car was back-firing. He also said that the cranking lever would not stay in the car and that he had taken that out and put it in his pocket, and that was all that they had in the shape of a pistol. He told me that was what I heard, was the car back-firing. He said there was no pistol in the crowd.

Mrs. D. H. SAULS, being first duly sworn as a witness for the Government, testified as follows:

I know the Thorton boys, Waverly and Wesley McDonald and Tinker Carroll. I also recall the occasion where there was some hooting over at the McKinnon vat, they came to my house that night

the shooting was done, and Shabie asked me for a lantern to see how to drive home. I told him I didn't have one. Then Tinker Carroll said, "We will stop there at the camp and get one." And Shabie then pulled a bright pistol out of his pocket and said, "This will get us some lanterns and some tick men too." They remained at my house about an hour. I heard them shooting at the camp about 15 or 20 minutes after they left. I live about a mile from the camp. The time that elapsed between the time they left my house [fol. 50] and the time that I heard the shooting was sufficient for them to have traveled from my house to the camp site.

BARNEY GUEST, first duly sworn as a witness for the Government, testified as follows:

I live in Echols County, about three quarters of a mile from Camp McKinnon. I recall the occasion when the shooting at the camp took place. On that night I saw Oscar Thornton, Shabie Thornton, Inman Thornton, the two McDonald boys and Tinker Carroll. They were at my house I suppose something like an hour before the shooting. They came from toward the camp, and when they left they went in the direction of the camp. I heard some shooting after they left, and from the sound, it was somewhere around the camp. I also heard a shot or two before they got to my house; I heard one bullet hit a tree about two hundred yards from my house in a bay, but that was after they came to my house and a little after the shooting at the camp. I was at home at the time with my wife and baby and Lacy Ward and his wife. I know where Mr. and Mrs. Sauls live. These boys, when they left my house, went back toward the camp and then turned and came back by my house and went toward the Sauls home. They were gone in that direction a little while and then came back by my house. They first came to my house and stopped, then left and later came back by there going in the direction of Mr. Sauls'. The last time they passed my house they were going in the direction of the camp. During the time they were at my house I took them to be drinking. While they were there, Shabie said he wanted to talk to me and we walked around the house and he proposed to me to let's go up there and blow up that [fol. 51] vat. I said, "Shabie, don't do that, whatever you do, let that alone," and he said, "Well, let's go back in the house." He didn't say what vat he referred to, he just said, "that vat up there." I suppose it was ten or fifteen minutes after they passed my house the last time when I heard the shooting. When they were at my house, I did not see any weapons. I talked with all of them while they were at my house, but I did not get into any secret conversation with any but Shabie and Inman Thornton and Tinker Carroll, and that conversation was about blowing up the vat. Subsequent to the shooting at the vat, Mr. Bowen sent for these boys to go over to Statenville, and he talked with them and they came back. Later on I met Shabie Thornton here in town and he was telling me about it. I asked him what he told Mr. Bowen. He said, "We told

Mr. Bowen we were coming by there and the car was running in that sand bed and it got to backfiring and the camp men got to shooting at us." I asked him, "How come you to tell that?" He said, "I don't know, we just told that." Later on I asked him again why he told Mr. Bowen that, and he said, "Well, we were advised to tell it that way." I asked him who advised him to tell that, and he would not tell me for some time, but later on he told me that Buck (Carter) and Mann (Carter) told them to tell it that way. Shabie Thornton and Oscar Thornton and Inman Thornton and Wesley McDonald and Waverly McDonald are cousins of my wife, and they were visitors at our house before and after the shooting.

Mrs. BARNEY GUEST, being first duly sworn as a witness for the Government, testified as follows:

I am a cousin to the Thornton boys and the McDonald boys; [fol. 52] we are brothers and sisters children. I am related also to Tinker Carroll, but I don't know just what the relation is. Our relations are always friendly. I recall the occasion when the shooting took place at Camp McKinnon. I heard the shooting. These boys came to my house. I suppose it was just good dusk, and staid until somewhere between seven and eight o'clock. I suppose that dusk at that time of the year was between six and seven o'clock. They staid at my house something like an hour, or maybe a little more. Nothing was said about the camp or the men at the camp to me, nor in my presence. Shabie had two pistols, and Inman had one, but I don't know what kind they were. They took them out and showed them to us, and one of them said, "I have got a good gun," but there wasn't anything said about what they were going to do with them. When they first left there they went toward the camp, but they turned and came back by the house and went in the direction of Mr. Sauls. If they returned from that direction and passed my house again, I do not recollect it. I heard the shooting, and it was a right good while after they left my place. I could tell from where I was whether it was shotguns, pistols or rifles that were fired. These boys were driving an old Ford car. Before they got there, I heard some shooting, but I didn't hear any talking. No shooting was mentioned by them after they got there.

JIM CARTER, being first duly sworn as a witness for the Government, testified:

I am twenty-three years old and have lived in Echols County practically all my life. Smith Carter is my Uncle, and I knew where the Smith Carter spray pen was. The pen was at his house in Echols county and was destroyed sometime in June, 1922. [fol. 53] Lamar Carter, Alphonso Carter, Rader Carter, Neely Hires and myself destroyed it. The reason I went, Neely Hires came by

with his wife and told me about it. I told him I didn't have anybody to stay with my wife, and he said he would bring his wife there to stay with her. He wanted me to go over there with him to tear up the spray pen; he said a crowd was going. He said his father-in-law, Buck Carter, sent him there. He said his father-in-law said they would go over there and tear up that spray pen, that that was the only way to get through with dipping. He came over and told me he wanted me to go, and said he would bring his wife to stay with my wife. After ten o'clock, after I had gone to bed, he came with Floyd and Rader, and also brought his wife to stay with my wife. We went over and destroyed Mr. Smith Carter's spray pen, and then went on down to the Dukes place and destroyed that one, and this little Dukes boy, I learned afterwards, came out and put out the fire the second time. There was Neely and Floyd and Rader and myself and Lamar and F. L. and Alphonso at that vat. Lamar Carter and Alphonso Carter are sons of Smith Carter. The spray pen was about two hundred yards from Smith Carter's house. It was destroyed about eleven or twelve o'clock at night. Neely or Floyd brought a kerosene can, and some of them poured kerosene on it. The first thing we did, we tore it down and then piled it in an old vat that had been blown up before then. Smith Carter's vat had been blown up twice before that, I think. After we piled it up, we poured kerosene on the spray pen and burned it up. After we destroyed this vat we then went to the Dukes vat, all of us except Lamar and Alphonso. We went through the same process there and set it on fire twice. I know Mann Carter, and I knew Max Lockridge. I was with Max Lockridge at Mann Carter's when he [fol. 54] penned up one of Carter's cows. My father had got hurt, and I was riding in his place. I think my father was with the State, he was an instructor. We penned up some cattle at Mann Carter's own vat, and he came up there and said he was going to turn out the cow. He said it had been dipped, that he dipped it himself. Max asked him not to turn it out, and he kept saying he was going to turn it out anyhow, that there was no law to make a man paint his cows, and it didn't make any difference whether it was painted or not. He also used some profanity to Mack, and he told us to go away from there and stay away, that he built that vat for himself and not the public. One of the cows had ticks on it. When they go through a vat, ticks will stay on them for a day or so and then drop off. He said he had dipped that cow about three days before that. We told him what the charges were for dipping it. The charges went to Echols County. We told him if he did not pay the charges we would take it to the camp. If he was armed at that time, I did not see it. I went to the camp to see Mr. Jeter and when I came back Max Lockridge had his horse tied across the road. At one time, I had a conversation with Mann Carter about dynamite. He told me the vats would be dynamited if they could get the dynamite. He told me that was why they were staying as long as they were, that they could not get the dynamite. When we were talking about the dynamite, he said he was going to Jacksonville to get a tire for his truck. He went to Jacksonville, and when he came

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back he was telling me about being in Jacksonville. Just a few days after he returned from Jacksonville the vats were blown up. On one occasion I heard Beaurie Corbett say that little mob, referring to the men at the camp, had their guns, but he said "We have got guns too, and we can shoot too." I can not remember just when that [fol. 55] statement was made, whether it was before or after the shooting at the camp. I was convicted once in Statenville in a neat scrape they had over there. There were five of us jointly indicted, and one has never been tried. One of those indicted is a defendant in this case.

Mrs. W. T. DUKES, being first duly sworn as a witness for the Government, testified as follows:

I lived at one time in Echols County, and am the mother of Opal Dukes and R. T. Dukes. I recall when the spray pen, known as the Dukes spray pen, was set on fire. I had been sitting up with a sick baby, and the night of the fire I heard a racket down that way and I looked out and saw the fire. My little boy was asleep but I woke him up. I had him go with me down there, and we put the fire out. I was then put on fire a second time and he and I went down there and poured water on it and put it out. The spray pen was not completely destroyed that night. I also recall once when the vat was dynamited. When it was dynamited in the afternoon, two men drove up in an automobile. It has been dynamited three times, the first only once in the day time. When it was dynamited in the afternoon, a car passed just in front of Mr. Carter. In his car was Mr. Mann Carter and his son, Will. The car didn't stop at the vat but just a minute, then they went on down the road to somewhere about where the camp was established, and then turned around and came back after the explosion. The explosion occurred in three or four or five minutes after Mann Carter left the vat.

[fol. 56] Cross-examination:

I knew Mr. Mann Carter before I married, if I have been in his company any since then I don't remember. I recognized him that afternoon as being the man that always drove the car they called Mann Carters. Of my own knowledge, I could not say that I knew him, and I don't know of my own knowledge who the other man in the car was. This occurred about June, 1922. It was before R. S. English and the other guards employed at Camp McMonn went down there.

Redirect examination:

According to the best of my recollection he (indicating Mann Carter) reminds me more of that man I saw stop at the vat just before the explosion than any one I see here.

OPAL DUKES, being first duly sworn as a witness for the Government, testified as follows:

I am nine years old. I go to Sunday-school and school and can read and write, and I know what it means to tell a story. I remember when the vat near my house was dynamited. I saw two men drive by there in a Ford car just before it was dynamited. I heard my brother say, "Look out, don't blow up that vat." I do not know Mann Carter or Will Carter. I would not know the men that were there that day if I were to see them. The car stopped at the vat, but the engine didn't stop, and the men got out. They just went to the vat and stayed a minute and then went back to the car. They went down the road to the McKinnon houses, and that was about the time the explosion went off, and then they turned [fol. 57] and came back and went in the same direction from which they had come. This happened in June, but I don't know what year,—it was not last Summer.

R. T. DUKES, being first duly sworn as a witness for the Government, testified as follows:

I recall the time when an effort was made to burn the spray pen at my house. I put the fire out twice. It was about ten o'clock at night, I suppose. The spray pen was about 75 yards from the house. I saw someone there the night I put the fire out, but I did not see but one person, and I did not recognize him. I know Mann Carter and Will Carter. The day the vat was destroyed at my house, I saw those two men. I saw them in a Ford car, with the top down. Mr. Mann Carter has a car like that. When I first saw them, the car had stopped at the vat. I was in the kitchen. The car stopped at the vat a minute or so, and the explosion must have occurred in about five minute after it left. I saw Mann and Will Carter after that they came back by the house. I was on the back porch and could see them. They went up the road and then turned around and came back by the house. It was about an hour by sun, I reckon, or a little later. It was good daylight. I saw these men in the car, but I did not see them get out; there was a corn field between me and them. I saw them stop at the vat, but I did not see them get out.

SMITH CARTER, being first duly sworn as a witness for the Government, testified:

I am the father of Alfonso, Lamar and F. L. Carter. There were [fol. 58] three dipping vats built on my property, and they were all blown up,—two at night and one in the day time. I also had one spray pen there. I had a conversation with Mr. Mann Carter prior to the building of this spray pen. He was over at my house at the time it was built. He does not live very far from me, and he

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would be over there every morning when they were being built, and he would always tell me to not let us have spray pens built and not allow people to come in there and build any. He said, "If we don't get any pens and don't have any vats, we will not have to dip any cattle." He said "Echols county is broke, and she wont spend any money, and the Government won't spend a dollar here." He said, "We don't want these things built here, and if we all join together they will not be built, and all those that don't join, it will not be good for them." He said they would make it tough for them that didn't join in. I furnished some poles to the Government or state authorities for the purpose of building pens; I let Mr. Jeter have the poles. I had a conversation with Mr. Mann Carter, and he advised me not to let them have any poles at all. Mr. Carter always told me, "If you keep these vats all burned up and the spray pens burned, we won't have any dipping." When we were speaking about having the pens built, Mr. Carter advised me not to let them build them there, and he said "Just keep the vats and spray pens blowed up and there will be no dipping." I told him we could never do a thing like that, that there would be a hereafter to it. I said we could not keep all those vats and pens burned up. I said, "the Government will put detectives in here and tree the whole thing." He said, "We will get them, we will put them in the river and make cat fish bait out of them." I recall also a statement he made that "Buck Carter, Prescott and I can handle any thing that comes [fol. 59] in Echols County." Those spray pens were built in May or June, 1922. That was before these Government men were put at Camp McKinnon.

Cross examination:

These conversations were before these Government men were down at Camp McKinnon. The vat on my premises was also blown before the Government went down there, that is, before Mr. English and the others at Camp McKinnon were sent there. My vat was burned also before that time.

J. ROLAND HAMMOCK, being first duly sworn as a witness for the Government, testified as follows,

I am now living at Manatee, Florida, but formerly lived in Echols County, Georgia, while in Echols County I farmed and worked for the State in the cattle dipping business. I worked for the State for about 18 months. During that time, I saw Will Carter at various times and places. I saw him in a pasture on one occasion. Wimberly, one of the Government men, and Max Lockridge, Roy Ritchie, and Henry T. Lowell were with me. We were holding up some cattle in the corner of a pasture and he came up there with his gun. Will Carter came up and asked me, with an oath, what I was doing

there. I told him I was sitting there on the edge of the log; and he cursed me and told me *and told me* to get out. I told him I would get out. I was not armed at the time, and I could not say as to the other men, but I think they were. He said he didn't blame the other boys for what they were doing, but he did me. He said we had always been good friends and got along all right, and he [fol. 60] blamed me. I told him I would get out, and I did. I was scared. I had had dealings with Will Carter prior to that time with respect to the dipping of cattle. He said the people were blood-thirsty over it, and they were going to have it,—referring to the cattle dipping. Just a few minutes after Will made this statement to me, Max Lockridge and Ritchie came out of the pasture with a cow, and Will got in the gate. He said he was not going to stand for the cow to be taken off. He had his gun at the time. They carried the cow off.

JOHN LORTON, JR., being first duly sworn as a witness for the Government, testified:

I am about 34 years of age, and have lived in Echols County three years. I know Dr. Prescott, Wiley Corbett, George Herndon, Rader Carter, Mann Carter, Will Carter, Frank Staten and Floyd Carter. I was employed by the State as a vat guard in Echols County. I guarded the Prine vat. I saw those men I have named at the Prine vat. I was guarding the vat at the time, and Frank Peterson was with me. This occurred at night, in the month of June, 1922, I think it was. On the occasion when I saw these men, I was standing at the back of the vat, outside the pen. I was guarding the vat to keep it from being blown up; the Smith Carter vat had been blown up that day, and two others were blown up that night. I was armed with a single barrel shot gun. These men came there in a Ford car and a Buick. The Buick had a spotlight on it, and I did not know of anybody else that had a Buick with a spotlight on it except Dr. Prescott. Mann Carter owned a Ford like [fol. 61] the one they came in. When these people came there that night, they passed right on by the vat about 50 yards, the Ford in front and the big car following. They stopped about 50 yards below the vat and began to get out of the cars. They came right on back to the vat. Some of them opened the gate to the pen, like they were going to put cattle in,—there are two gates, and they opened them both and some came in each way. When they came in they struck a match to light a fuse with. I could see them, and can name them every one. It was Wiley Corbett, George Herndon, Rader Carter, Floyd Carter, Mann Carter, Will Carter, Dr. Eck Prescott and Frank Staten. It was my duty to keep them from blowing up the vat, and when they undertook to light the fuse, I shot the man that was trying to get the dynamite lit. Frank Peterson, who was with me, shot twice, and I shot twice. Peterson took to the branch and carried off all the ammunition. The biggest part of those men ran off that was able; they did not blow up the vat.

The whole business that came down there were shooting also, with shot guns and pistols. They fired in every direction. The next morning there were six puddles of blood there. Every vat that had been put down had been dynamited before I went to work. Something like 80 or 80 had been dynamited.

Cross-examination:

Wiley Corbett is the man that struck the match, and he was in the act of firing the dynamite when I shot into him. These other men were standing right by him. At the time this shooting occurred these men whose names are set out in this indictment as working for the Government had not been sent to Echols County, [fol. 62] but they came right quick afterwards.

EUGENE E. CARTER, sworn as a witness for the Government, testified as follows:

On the occasion of the shooting at Camp McKinnon, I was at the camp and saw the car go by the first time. I heard the car coming and heard those in it cursing. I was not there when they came back by and shot into the camp. I did not know the car or the people, and could not swear who was in the car. Sometime in 1923 I talked with Mann Carter and Will Carter several times in reference to cattle dipping. They said if we could keep them from having any vats we would not have to dip. That was all that was talked about down in there about that time, in May or June, 1922, among all the people generally.

Cross-examination:

That started in there before the camp was put in; Mr. Jeter was there, but the camp was not there. There was not a vat blown in the county or a spray pen destroyed after these Government men were sent down there and placed at Camp McKinnon. After these Government men were sent down there, the vats that had been blown up previous to that were rebuilt, and others besides. Mr. Mann built one. I was a county inspector a while. I was a county inspector then, and I am commissioned now as state inspector. The shooting occurred at the Prime vat on June 17, 1922. The last disturbance they had was in the month of June, I think, but I don't know.

[fol. 63] Roy S. RICHIEY, being first duly sworn as a witness for the Government, testified as follows:

I know Mann Carter and Will Carter. I was with Mack Lockridge on the day he was killed. I was wounded on that occasion, in the back, and on the arms and head. Mr. Lockridge and I had

started to the Corbett vat to dip some cattle that had been left out on dip day,—we were going to supervise the dipping of the cattle under the direction of Mr. Counts, who was in charge of the camp in Mr. Jeter's absence. Mr. Count was employed by the Government. On that morning, February 3rd, Counts gave Mr. Lockridge orders to go to Wiley Corbett's vat and dip some cattle that had been left out on dip day, and Lockridge asked me to go with him. We started off in a Ford, and as we started Counts told us to stop by Mann Carter's and notify him about a yearling that had been taken up the day before. We intended to stop by Carter's house, but we saw them on the left side of the road about seventy-five yards off. I got out of the car and told Lockridge to wait and I would notify them about the yearling. I did so, and turned back to go to the car, and he started to walking back toward the car with me, on my left side. Will Carter turned off down a little dim road, and Mann Carter walked with me back to the road. He walked to the edge of the road with me and stopped. The car was stopped in the middle of the road. Mann Carter and Will Carter had double barrel shotguns. I had a gun, but it was broke. Lockridge had a forty-five revolver, and was carrying it in a holster on his right side. Mann Carter came up to the edge of the main road, but Will had turned to the left, and I did [fol. 64] not notice where he was going. When I got back to the car Lockridge was lighting a cigarette, and said, "Richey, are you ready to go?" Lockridge and I turned and started around the car and had walked about ten steps back of the car and he was standing about the center of the road. I turned to get back in the car on the left side; I was driving. He was back of the car and was going to get in on the right side. Lockridge was about ten feet from the car, I suppose, and Mann Carter said, "You all going to turn that yearling out?", and Lockridge said, "No," and as he said that he started to turn and face him. He turned this way (indicating), and said "No" over his shoulder. Just as he said no, I heard the click of a gun, the hammer, and I looked around, and just as I looked he shot. I saw Mann Carter with his double barrel shot gun leveled on Lockridge, and he fired just as I looked. Lockridge fell and kept twisting, and about the same time another shot came and some shot hit me in the left side. Mann Carter fired the first shot. Will Carter was off to our left, and I had not seen him since he turned off from us to go down that little dim road. I turned then and saw Will Carter with a shotgun leveled on me, and I ducked and run, but before I ran, I pulled this little thirty-two automatic and threwed it on Mann Carter, and as I did that Mann Carter shot at me, but he did not hit me. Then I ran around the front end of the car and into the woods away from them. Just as soon as I got out of the road Will Carter shot me in the back with a shotgun. I kept running along and looked back and I saw Mann Carter pulling his pistol,—he had his coat on and he was pulling at his coat or belt like he was trying to get a pistol out. I run on and he hit me with the pistol and it staggered me at the time. When the pistol hit me I turned to the right and [fol. 65] went into the pond to hide from them. I went on through the pond in the direction of Jim Carter's house, who lived about three quarters of a mile away. When I got there, I saw Everett and Jim

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Carter and his wife. He hitched up his horse and carried me to the camp and sent for a doctor, and the doctor came and gave me something to ease my pain and sent me to the hospital. The doctor was Dr. Prescott, and he made an examination of my wounds and said I'd better go to the hospital. There was an X-ray picture made, and I would know it if I saw it again. The bullet wound is on the right side. When Mack Lockridge was shot, he was walking away from Mann Carter and as he turned to say no, he shot him, and he twisted like this (indicating) and fell on his face. Mack Lockridge was not seeking to shoot, and never did reach for his gun. "No" was all that he had said to Mann Carter or Will Carter. I pulled this little gun out and throwed it on him after he shot Lockridge, but I never did fire and Lockridge never did fire.

Cross-examination:

There were some ten or twelve Bureau of Animal Industry men employed at Cam McKinnon. We had forty-five revolvers, and also some riot guns. We had received instructions from Dr. Horne to use the guns only in self defense. I was discharging the duties of a range rider and on the occasion of trips on the range, we carried these revolvers. I do not know what Mann and Will Carter were doing out there in the woods, they had shotguns and a dog with them, a bird dog. Mr. Carter owns a farm in a southwesterly direction from where the killing occurred. I first saw Will Carter after the shooting (fol. 66) commenced about thirty or forty or fifty yards away, coming towards the car. The shots that struck me from the shot gun were bird shot, sixes or sevens. I was not looking at Will Carter when he shot, but he was the only one in that direction.

J. L. GIDDENS, being first duly sworn as a witness for the Government, testified as follows:

I am an undertaker, and I recall the occasion when Mack Lockridge was killed. I saw him afterwards, in my morgue room, on the table. I made an examination of the wounds. He was wounded three times, there were many shots that went square in the left shoulder, and the balance ranged from the throat to the corner of his left eye. He looked around with his eye open, because no shots went through the lid of his eye, and most of the load went in the corner of his mouth and his nose. There were a good many shots in his neck. The corner of his mouth was shot out and part of his tongue was off, and his teeth were shot out of the corner of his mouth. I judge those shots came from the rear,—from the left and rear,—it came from the direction of over his left shoulder. There were some shots in his right arm. He was also shot in the right side, he was also wounded right over the heart,—two times. There was a hole over his heart as large or larger than a silver dollar; you could see in the cavity without getting very close to it. In my opinion, this shot would have killed a man. I am also of the opinion that the shot in his left breast would have killed him.

[fol. 67] EVERETT CARTER, being duly sworn as a witness for the Government, testified as follows:

I was among the first to get to Mack Lockridge after he was killed. There was nobody there but Max when we arrived. Mr. Counts and Mr. Herring went with me. I noticed Lockridge's revolver belt; the holster was pulled from under him and looked like it had been unloosened or unsnapped. There were two or three gun shells lying around there and gun wadding; and also three puddles of blood. There was a match box there, and some one had been striking matches. The match box was about half open, the best I remember. Some one had been smoking cigarettes there, I saw the paper from around it. I picked the paper up, and at the time I picked it up, it did not have any tobacco in it. I noticed blood on the match box.

OFFERS IN EVIDENCE

Here the Government introduced the following documentary evidence:

A contract or agreement entered into between A. D. Melvin, Chief of the Bureau of Animal Industry, U. S. Department of Agriculture, and Peter F. Bahnsen, State Veterinarian of Georgia, which said contract or agreement is in the words and figures following:

"Atlanta, Ga., June 17, 1915.

Memorandum of Understanding

Regarding eradication of the Cattle Tick in the State of Georgia by co-operation between the State Veterinarian of the State Department of Agriculture, and the Bureau of Animal Industry of the United States Department of Agriculture.

[fol. 68]

I

The Bureau of Animal Industry of the United States Department of Agriculture agrees:

1. To detail a competent veterinary inspector, to be known as Inspector in charge to direct the tick eradication work.

2. To detail additional veterinary inspectors and agents in tick eradication to the extent of the means at hand and in proportion to the funds expended by the state for the employment of inspectors.

3. To pay the salaries of Bureau employees and such traveling expenses as are incurred under Bureau instructions and authorized by the fiscal regulations of the United States Department of Agriculture.

4. To furnish all necessary blank forms, except the state quarantine and permit blanks and poster notices adopted as official for the state.

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II

The State Veterinarian of the State Department of Agriculture agrees:

1. To appropriate or reserve for tick eradication work for the current year \$25,000.00.
2. To employ competent state inspectors to the extent of the means at hand to aid in this work.
3. To enforce state regulations governing the movement of cattle [fol. 69] within the State, similar to the regulations of the United States Department of Agriculture governing the interstate movement of cattle from the quarantined area.
4. To enforce measures authorized by law looking to the protection of tick eradication areas against the introduction of infection from without, and to quarantine and prohibit the intra-county movement of infected cattle within the eradication areas, except under conditions mutually agreed upon between the State and Federal authorities.
5. To furnish the required official state quarantine and permit blanks, also copies of the state regulations for use in tick eradication work.

III

The State Veterinarian of the State Department of Agriculture and the Bureau of Animal Industry of the United States Department of Agriculture mutually agree:

1. That the work of tick eradication shall be co-operative in every particular.
2. That the work shall be carried on in co-operation with the State official having jurisdiction over this work, who will be expected to use his influence to harmonize the various state agencies and in directing the work to localities where the greatest good can be accomplished.
3. That the inspector in charge of the Bureau of Animal Industry will confer with the said State official and welcome any suggestions offered with a view of improving methods in the work, but any suggested deviation or departure from the established practice of the Bureau of Animal Industry must have the approval of the Chief of the Bureau of Animal Industry before being adopted.
4. That it shall be the aim of the Federal and State authorities to select and employ as agents in tick eradication and local inspectors only such men as are satisfactory to both parties, and the services of such employees shall not be discontinued by either party without first consulting with the other.
5. That in order to avoid duplication of work and unnecessary re-

ports all Federal, State and County employees making inspections and supervising the disinfection of cattle shall render the monthly reports required by the Bureau of Animal Industry of the work, and shall furnish copies to the State office, if desired.

(Signed) A. D. Melvin, Chief of the Bureau of Animal Industry, U. S. Department of Agriculture. Peter F. Bahnsen, State Veterinarian, State Department of Agriculture.

Said contract, when offered in evidence, was objected to by counsel for the defendant upon the following grounds:

1. Because Peter F. Bahnsen, State Veterinarian, was not authorized under the law to make any such contract with the Chief of the Bureau of Animal Industry or with the Bureau of Animal Industry.

[fol. 71] 2. Because there is nothing in the indictment which charges that the work of tick eradication in Echols was proceeding at the time of the acts alleged to have been committed by the defendants under the Act of May 29, 1884, and there is nothing in the indictment which charges that there had been any contract or agreement between the State of Georgia or any authority of the State of Georgia and the Department of Agriculture of the United States.

3. Because the Department of Agriculture had no authority under the law to make such a contract, and because the employees of the Bureau of Animal Industry were not authorized under the law to perform the duties set forth in the contract, even if it was made as appears from the memorandum of agreement offered.

Upon consideration, the Court overruled said objections, upon each and every ground, and admitted the contract in evidence. To said ruling the defendants asked that an exception be noted, and the same was noted and allowed.

Here the Government introduced the following documentary evidence:

A true bill of indictment returned by the Grand Jury of Echols County, Georgia, on September 12, 1922, charging J. C. Geter with the offense of a misdemeanor, in that he did carry a concealed pistol on September 11, 1922 in said county, and in that he did carry said pistol to a Court of justice then in session, and in that he did carry said pistol without first having obtained a license so to do.

[fol. 72] A true bill of indictment returned by the Grand Jury of Echols County, Georgia, on September 12, 1922, charging H. J. Murphy with the offense of a misdemeanor, in that he did carry a pistol on his person without having taken out a license so to do.

A true bill of indictment returned by the Grand Jury of Echols County, Georgia, on September 12, 1922, charging T. H. Applewhite with the offense of a misdemeanor, in that he did carry a concealed pistol on his person on September 11, 1922, and in that he did carry said pistol without first having obtained a license so to do.

A true bill of indictment returned by the Grand Jury of Echols

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County, Georgia, on September 12, 1922, charging Lon Archer, Max Lockridge and W. D. Counts with the offense of a misdemeanor, in that they did unlawfully arrest and detain one J. H. Howell on September 1, 1922, without any warrant or other process authorizing them so to do.

A true bill of indictment returned by the Grand Jury of Echols County, Georgia, on September 12, 1922, against T. H. Applewhite, in which said T. H. Applewhite was charged with the offense of misdemeanor in that he did unlawfully carry a pistol both to and while at a Court of justice in said county on September 1922.

Also a true bill of indictment returned by the Grand Jury of Echols County, Georgia, on September 12, 1922, charging J. C. Peter with the offense of a misdemeanor, in that he did carry a concealed pistol in said county on September 11, 1922, and in that he did carry said pistol on his person without first having obtained license so to do.

Also B. A. I. Order No. 215 issued June 15, 1916 by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled [Vol. 73] "Regulations Governing the Interstate Movement of Live Stock," effective on and after July 1, 1915.

Also B. A. I. Order No. 235, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 1.—To prevent the spread of Splenetic, Southern or Texas Fever Cattle," effective on and after December 1, 1917.

Also B. A. I. order No. 252, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 1.—To prevent the spread of Splenetic, Southern or Texas Fever Cattle," effective on and after December 1, 1918, and amendments numbered 1, 2, 3, 4, 5, 6 and 7 thereof.

Also B. A. I. Order No. 263 issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Regulations governing the interstate Movement of Live Stock," effective on and after July 1, 1919, and amendments numbered 1, 2 and 3 thereof.

Also B. A. I. Order No. 269, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 1.—To prevent the spread of Splenetic, Southern or Texas Fever Cattle," effective on and after December 1, 1919, and amendments numbered 1 and 2 thereof.

Also B. A. I. Order No. 271, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 1.—To prevent the spread of Splenetic, Southern or Texas Fever, in Cattle," effective on and after December 1, 1920, and amendments numbered 1 and 2 thereof.

Also B. A. I. Order No. 273, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Regulations governing the Interstate Movement of Live Stock," effective on and after July 1, 1921.

[Vol. 74] Also B. A. I. Order No. 275, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1,

Revision 20,—To prevent the spread of Splenetic, Southern or Texas Fever in Cattle," effective on and after December 10, 1921.

Also B. A. I. Order No. 279, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 21,—To prevent the spread of Splenetic, Southern or Texas Fever in Cattle," effective on and after December 10, 1922.

Also B. A. I. Order No. 285, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 22,—To prevent the spread of Splenetic, Southern or Texas Fever in Cattle, effective on and after December 31, 1923.

It was here admitted by counsel for the defendants that during the time that each and all of the above named orders were in force, Echols County, Georgia, was within the area quarantined because of the existence of Splenetic, Southern or Texas Fever among cattle and other live stock.

Here the Government introduced the following documentary evidence:

A certified copy of the appointment by the United States Department of Agriculture of Roy S. Ritchey to the position of Agent in Tick Eradication, dated July 24, 1922. Said appointment is in the words and figures following:

[fol. 75] "United States Department of Agriculture, Office of the Appointment Clerk, Washington, D. C.

July 24, 1922.

(Caution: This letter, while evidencing an appointment as of the date thereof, is not to be accepted as a credential for operating. Any person approached by the holder is entitled, on demand, to view his regular departmental credential in the form of a badge or a current identification card.)

Mr. Roy S. Ritchey, Bureau of Animal Industry.

SIR: You are hereby notified that you have been appointed to the position of Agent in Tick Eradication on the miscellaneous roll of the Bureau of Animal Industry, at a salary of \$1,680 per annum, effective July 30, 1922. You are required to furnish a saddle horse and equipment and to use the same in your official work, without expense to the Department. You are required to take the oath of office immediately, and fill out the personal statement sheet, inclosed herewith, and return the same (through the Chief of Bureau) to the Appointment Clerk. You will report for duty in writing to Dr. Sim J. Horne, Atlanta, Georgia, for assignment to an official station.

By direction of the Secretary of Agriculture.

Respectfully (Signed) P. L. Gladmon, Chief Personnel Officer.

Legal Residence: Georgia.
C. S. Authority."

[fol. 76] Also certified copies of the appointments by the United States Department of Agriculture of Lon L. Archer, and others, to the position of Agent in Tick Eradication, which said appointments are in the same form and of the same tenor and effect as that of Roy S. Ritchey set out next above. Said appointments being of the following named parties and are of the dates set opposite each name, respectively:

Lon L. Archer	July 24, 1922
Robert S. English	Aug. 7, 1922
Hillary J. Murphy	July 24, 1922
Max C. Lockridge	July 28, 1922
Demer Counts	July 24, 1922
Robert Bragg Thompson	Feb. 20, 1922
Joe Pate Wimberly	Oct. 23, 1922
James C. Jeter	Apr. 22, 1922

Also certified copy of the appointment of Dr. Sim J. Horne, by the Department of Agriculture, to the position of Veterinary Inspector, dated March 23, 1915. Said appointment is in the words and figures — follows:

“United States Department of Agriculture, Office of the Appointment Clerk, Washington, D. C.

March 23, 1915.

Mr. Sim J. Horne, Bureau of Animal Industry.

SIR: You are hereby notified that you have been appointed for a probationary period of six months, to the position of Veterinary Inspector, on the miscellaneous rolls of the Bureau of Animal Industry, [fol. 77] at a salary of \$1,400 per annum, effective March 25, 1915. Retention in the service after the expiration of your probationary period shall be equivalent to absolute appointment. You are required to take the oath of office immediately, and fill out the personal statement sheet, inclosed herewith, and return the same (through the Chief of Bureau) to the Appointment Clerk. You will report for duty in person to Dr. W. N. Neil, Chicago, Illinois.

By direction of the Secretary of Agriculture:

Respectfully (Signed) R. W. Roberts, Appointment Clerk.

Legal Residence: Mississippi.

Certificate No. 11359, dated March 10, 1915.”

Also certified copy of the appointment by the United States Department of Agriculture of Thomas H. Applewhite, to the position of Veterinary Inspector, which said appointment is in the same form and of the same tenor and effect as that of Dr. Sim J. Horne set out next above. Said appointment being dated March 29, 1915.

Here the Government introduced the following documentary evidence:

Revised Regulations for the Control and Suppression of Infectious and Contagious Diseases of Live Stock, promulgated by the State Veterinarian of the State of Georgia under authority conferred by the Acts of the General Assembly of Georgia approved August 13, 1910, and approved by the Commissioner of Agriculture of said State, [fol. 78] effective on and after February 1st, 1920. Said regulations are in words and figures following:

“Regulations for the Control and Suppression of Infectious and Contagious Diseases of Live Stock

Regulation No. 1

Paragraph 1. No animal affected with any infectious, contagious or communicable disease shall be permitted upon any public highway, open range or upon public grounds; nor shall they be allowed to feed in public places, or water at public fountains.

Paragraph 2. Every licensed Veterinarian or county and city health officer who has knowledge of the existence of any infectious and contagious disease of live stock shall report same to the State Veterinarian. Such reports should embrace a short sketch of the outbreak, including symptoms, number affected, number of animals dead, location of premises and name of owner.

Regulations Covering Quarantine, Inspection, Disinfection, and Movement of Cattle in the State of Georgia, Infested with or Exposed to the Cattle Fever Tick (*Margaropus Annullatus*), which Transmits Splenic, Southern or Texas Fever in Cattle.

Regulation No. 2

Paragraph 1. There are no restrictions against intrastate movement of cattle originating in area released from State and Federal quarantine, provided such cattle are not under local farm quarantine; [fol. 79] and provided further that as soon as cattle moving or drifting from the free acre enter the quarantined acre, they are immediately and automatically quarantined and must, thereafter, move as specifically provided for in these regulations.

Paragraph 2. Cattle shipments originating at points in area released from State and Federal quarantine may move without restriction to any point within the State of Georgia, provided no part of the shipment originates on a farm held under local quarantine. Should a shipment from the released area, while in transit, be unloaded at any point in the quarantined area such shipment must, thereafter, be handled as provided for in paragraph 3 or regulation five.

Regulation No. 3

Paragraph 1. Upon establishing the work of cattle tick eradication along approved, systematic lines, in any county, there shall be due

and sufficient public notice given by the use of posters at the Court house and along the county line or public highways entering the county.

Paragraph 2. In stock law counties. There shall be as soon as practical a systematic, farm to farm inspection of all cattle by cattle inspectors, regularly appointed and commissioned by the State Veterinarian. When cattle, even one or more animals in a herd, are found to be infected with or exposed to the fever tick (*Margaropus Annulatus*), the owner or keeper of said cattle and premises shall be served with official notice of quarantine by the cattle inspector, and instructed when and where to dip his cattle.

[fol. 80] Paragraph 3. In open range counties, all cattle are exposed to tick infestation and must therefore be regularly disinfected by the owner until tick eradication is completed and dipping discontinued in the county.

Individual milk cows that are free from tick and never permitted to leave the owners lot may, at the discretion of the Supervising Inspector, be exempted after 2 or 3 dippings.

Paragraph 4. Cattle infested with or exposed to the cattle fever tick (*Margaropus Annulatus*) shall not be driven, transported or allowed to stray over or upon public highways, commons or ranges. Such cattle, under direction and supervision of the State Veterinarian or regularly appointed and commissioned cattle inspectors, may be moved to a place within the county for proper and approved disinfection.

Paragraph 5. When an owner or keeper of cattle and premises is served with official notice of quarantine said cattle shall be properly and thoroughly disinfected by him, regularly ever fourteen days, until such time as it is ascertained by regular official inspection that the cattle and premises are free of ticks. See Sec. 4, Acts 1918.

Paragraph 6. Owners or keepers of cattle that have been officially quarantined and have followed all instructions with reference to freeing their cattle and premises of ticks, may move cattle from or onto such quarantined premises upon inspection and written permission by a regularly appointed and commissioned cattle inspector. No permit can be issued for movement of cattle infested with ticks.

[fol. 81] Paragraph 7. Request from the owner or keeper of cattle of a desire to move cattle, from or onto quarantined premises, shall be given sufficient time in advance for the inspector to make a personal inspection of the animals.

Regulation No. 4

Paragraph 1. The only recognized materials and methods for disinfection of cattle to destroy cattle fever ticks are as follows: The standard arsenical solution, or approved arsenical preparations which conform to the arsenical test adopted by the United States

Bureau of Animal Industry when used in an approved dipping vat or otherwise applied in a manner approved by the State Veterinarian, under the supervision of a State cattle Inspector. Owners or keepers of cattle are required, upon notice, to have their cattle on hand at the local established dipping vat or other recognized place for disinfecting properly and regularly in a manner satisfactory to the State Veterinarian. (Owners and keepers of cattle are required to handle and disinfect their own cattle under official supervision.)

Paragraph 2. When conditions exist to warrant removal of cattle or other live stock from infested lots, pastures or ranges, the owners or keepers of cattle, live stock and premises shall, upon written notice from the State Veterinarian, or cattle inspector, immediately remove same in the manner and methods prescribed by the State Veterinarian under official supervision. The infested lots, pastures or ranges to remain vacant for a sufficient time to allow such premises or ranges to be freed of tick infestation.

[fol. 82]

Regulation No. 5

Paragraph 1. Cattle originating within counties in which the work of tick eradication is established may be shipped into counties released from State and Federal quarantine or into counties where the work of tick eradication is established, provided such cattle have been inspected and dipped under the supervision of the State Veterinarian, or a regularly appointed and commissioned cattle inspector prior to shipment. Said cattle inspector shall issue a written permit for the movement of such cattle, same to be attached to way-bill and accompany shipment to destination. Railroad pens, lots and chutes, including the cars or boats used, shall be cleaned and disinfected under official supervision before receiving the cattle for shipment.

Paragraph 2. Cattle may be moved from counties in which the work of tick eradication is established into counties released from State and Federal Quarantine, or into other counties in which the work of tick eradication is established via public highways, upon official inspection and written permission, if such highways lead direct into counties released from State and Federal quarantine, provided movement is made without passing through a quarantine county or part thereof, where the work of tick eradication is not established.

Paragraph 3. Should it become necessary in case of emergency, to unload cattle moving under the provision of this regulation in a quarantined county, where the work of tick eradication is not in progress, then the State Veterinarian or a regularly appointed and commissioned cattle inspector shall be notified. Said cattle shall not move [fol. 83] to destination except upon the regulation governing the transportation of cattle from quarantined counties in which the work of tick eradication is not established.

Regulation No. 6

Paragraph 1. Cattle of the quarantined counties, in which the work of tick eradication is not established, may be driven or transported into counties where the work of tick eradication is established, provided the cattle are inspected, found free of ticks and dipped under the supervision of the State Veterinarian, or a regularly appointed and commissioned cattle inspector. An official permit shall be issued to accompany the movement to destination.

Paragraph 2. Notice of a desire to move cattle under this regulation, shall be given a sufficient time in advance to inspect, disinfect, permit and direct the movement. Clean and disinfected cars or boats shall be provided if shipped.

Regulation No. 7

Paragraph 1. Cattle of quarantined counties in which the work of tick eradication has not been established, may be moved into counties released from State and Federal quarantine, provided such cattle upon inspection are apparently free of ticks and are dipped once in a standard arsenical solution, at a recognized official dipping station, under the supervision of the State Veterinarian or a regularly appointed and commissioned cattle inspector before en-[fol. 84]tering such released counties. The cattle shall move within 12 hours after dipping, without exposure to infestation en route to loading point or destination, if driven; if shipped, such official permit shall be attached to the way-bill and accompany same to destination. If upon inspection the cattle are found infested with the cattle fever tick they shall be quarantined and dipped twice, ten to twelve days apart, before moving to destination.

Paragraph 2. Cattle moving under provision of paragraph 1 of this regulation shall, after final dipping, if shipped, be loaded through cleaned and disinfected pens and chutes into cleaned and disinfected cars or boats, which have been cleaned and disinfected under official supervision, and move within twenty-four hours after final dipping.

Regulation No. 8

Paragraph 1. Cattle originating in the counties in which the work of tick eradication is established, if not under local quarantine, may move into a quarantined county where the work of tick eradication is not established without official inspection and permission, provided the movement is made directly into the county to which such cattle are destined without passing through a county released from State and Federal quarantine, or through a county in which the work of tick eradication is established.

Regulation No. 9

Paragraph 1. The chiefs or heads of divisions of transportation [fol. 85] companies doing business within the state will be notified (by mail) by the State Veterinarian of the establishment of quarantine regulations governing the transportation of cattle; also of all changes or amendments to such quarantine regulations.

Regulation No. 10

Paragraph 1. No cattle shall be accepted by any transportation company in the State of Georgia unless such cattle are free of ticks. The movement of cattle infested with the cattle fever tick (*Margaropus Annulatus*) into, within or through the State of Georgia, at any time or for any purpose is prohibited by the laws of the State of Georgia. (See Sec. 1, Acts of 1918, page 256.)

Paragraph 2. The owner or authorized agent of owner of cattle desiring to ship cattle from the quarantined area in which tick eradication is not in progress, must file, in duplicate, with agent of transportation company at the time of delivery of said shipment an affidavit sworn to before some officer authorized by law to administer an oath, deposing that he has carefully examined the cattle and found them free of ticks. The agent at the point of origin must attach the original affidavit to the way-bill, which must accompany the cattle to destination, and must immediately send the duplicate of the affidavit to the office of the state veterinarian, State Capitol, Atlanta, Georgia. The agent at destination of shipment shall mark the date of delivery of such shipment on the original affidavit and mail same to the State Veterinarian, State Capitol, Atlanta, Georgia, without delay.

Note provisions of paragraph. 7 to 9 incl.

[fol. 86] Paragraph 3. The following shall be the only form recognized and accepted by the State Veterinarian:

—, Ga., —, 192—

I, —, under oath, declare that I have carefully inspected and disinfected the following described cattle, complying with the provisions of the law regulating the suppression and control of infectious and contagious diseases of live stock in the State of Georgia, the provisions of the special Act of 1918 prohibiting the movement of tick infested cattle, and the supplemental regulations issued for this purpose by the Department of Agriculture, and offer them for shipment from —, in — county, State of Georgia, to — in — county, State of Georgia, via —. Describe the cattle here: —. These cattle are free of ticks. Should they, upon inspection while in transit, be found infested with ticks, I agree to pay all costs incident to feeding and disinfecting while these cattle are held in quarantine, the cost to be a bona fide lien

upon these cattle, which shall be paid before cattle are delivered at destination.

— — —, Owner or Authorized Agent of Owned. (State which.)

Sworn to and subscribed before me. — — —, N. P.
(State title of officer taking oath.)

[fol. 87] Paragraph 4. Transportation companies, failing to secure from owner, or agent of owner, of said cattle such affidavit in duplicate, or failing to promptly transmit same, as herein provided, to the office of the State Veterinarian, shall be jointly or individually responsible for any cost of feeding, disinfection and delay incident to quarantine restrictions and subject to prosecution, should such cattle be found infested with ticks upon official inspection by the State Veterinarian or regularly appointed and commissioned cattle inspector of the State of Georgia.

Paragraph 5. All cattle in the hands of transportation companies within the State of Georgia are subject to inspection at any point by the State Veterinarian or any regularly appointed and commissioned cattle inspector of the State of Georgia. Should any such cattle upon inspection be found infested with ticks (*Margaropus Annuatus*) they will be held in quarantine not less than ten days, until they are properly disinfected twice at the risk and expense of the owner of such cattle or of the transportation company as hereinbefore provided. And the owner, shipper or transportation company will be prosecuted as provided by law.

Paragraph 6. Cattle quarantined within the State of Georgia under the provisions of Regulation No. 10, shall be disinfected in one of the arsenical solutions named in paragraph 3 of Regulation No. 12. Following the first disinfection, they shall be held in quarantine not less than ten days, when they shall be again disinfected with, or in, the officially recognized arsenical solution.

[fol. 88] Paragraph 7. The cattle shipper's affidavit as provided in this regulation shall apply only in the transportation of cattle from one point to another in quarantined counties, where the work of tick eradication has not been established, except as hereinafter provided.

Paragraph 8. Transportation of cattle under shippers affidavit as provided for in this regulation may be made to public stock yards and market centers in counties where the work of tick eradication is established, or into counties released from State and Federal quarantine, for immediate slaughter or other purposes, provided the proprietors or owners of such stock yards or market centers make application in writing, to the State Veterinarian for his approval, and provided they equip and set aside separate pens and chutes and alleys (same to be equipped according to requirements of the regulations of the United States Bureau of Animal Industry for receipt and disposition of cattle of the area quarantined on account of Splenic fever in cattle), for the purpose of handling and disposing of cattle shipped under this regulation.

To avoid errors in placing cars at proper chutes agents are requested to write the name of the county in which shipment originates on the way-bill and to make the car containing such shipment: 'To be unloaded in quarantine pen'.

Paragraph 9. Transportation companies must require an official permit, in lieu of the affidavit hereinbefore mentioned, from any point within the quarantined area in counties in which the work of tick eradication is established and in progress under state and federal supervision.

[fol. 89]

Regulation No. 11

Paragraph 1. Cars or boats which have carried cattle of the quarantined area shall be cleaned and disinfected according to provisions of these regulations immediately after unloading and before such cars or boats enter the area released from State and Federal Quarantine. Manure and litter from quarantined pens or from the area quarantined for splenic fever in cattle shall not be released from State and Federal quarantine, unless same is disinfected or otherwise handled and disposed of under direction of the State Veterinarian.

Paragraph 2. Methods and material recognized for disinfection are as follows: Remove all litter and loose material, then saturate the interior surfaces of cars, boats or other vehicles, including floors, walls and doors, grounds and fences of lots, yards, chutes or other premises, with a five per cent solution of pure carbolic acid, cresole compound U. S. P. or some other recognized saponified cresol solution, four ounces to each gallon of water, with sufficient lime to show where it has been applied. Pens, chutes and alley-ways may be disinfected with double-strength Standard Arsenical solution.

Regulation No. 12

Paragraph 1. Any person, firm, corporation, transportation or other company, who violates these regulations governing quarantine, inspection, disinfection and movement of cattle infected with, or exposed to, splenic fever infection, transmitted by the cattle fever tick (*Margaropus Annulatus*) will be prosecuted. See Acts of 1918 H. B. 397.

[fol. 90] Paragraph 2. Cattle moved in violation of these regulations shall be held in quarantine and disinfected according to the prescribed methods at risk and expense of owner or transportation company, as the case may be, and may be ordered returned to point of origin at the discretion of the State Veterinarian.

Paragraph 3. The only disinfectants recognized for disinfection of cattle in suppressing the spread of splenic fever in cattle and the eradication of the cattle tick are as follows:

1. Standard arsenical boiled dip; the stock solution being diluted with nine (9) times its bulk in cold water.

2. Standard arsenical self boiled dip (known as S. B. Dip); the stock solution to be diluted with not more than one hundred and twenty (124) or less than ninety-nine (99) times its bulk in cold water.

3. Proprietary arsenical dips recognized by the U. S. Bureau of Animal Industry, to be used in dilutions prescribed on the label.

Regulation No. 13

Paragraph 1. Horses, mules and asses found infested with the cattle fever tick (*Margaropus Annulatus*) are subject to the provisions of these regulations.

Regulation No. 14

Paragraph 1. In construing Special Orders, as well as regulations promulgated by the State Veterinarian and approved by the Com-[fol. 91] missioner of Agriculture, the term "cattle" shall embrace bulls, oxen, steers, cows, heifers and calves.

Regulation No. 15

Paragraph 1. Cattle Inspectors are not allowed to charge or accept a fee of any kind from the public for the performance of their regular official duties.

The Government rested.

The Government having rested, the defendants introduced the following evidence:

JESSE PETERSON, being first duly sworn as a witness for the defendants, testified:

Direct examination:

I live in Echols County and have lived there practically all my life. I raise cattle and farm, and I inspect the dipping of cattle down there. I know Jim Carter, and have known him since he was small. I know his general reputation in the community where he lives, and from the reputation I would not believe him on his oath.

Cross-examination:

I was formerly a representative in the Legislature from Echols County, and was very active in an effort toward repealing the cattle [fol. 92] dipping law. I really was interested in a Bill to leave it optional with the southern counties of the State as to whether they dipped their cattle or not. I had several conversations with Governor Hardwick, and at one time with the Governor and Mr. Bahnsen, the

State Veterinarian. At this conference the Governor told Mr. Bahnsen to get two men, ex-soldiers, and machine guns. I did not see them with any machine guns or arms prior to that time, but I did after that time. It was at this conference I spoke of that the Governor told Mr. Bahnsen to get two machine guns and some ex-soldiers and install them in Echols County.

The defendants thereupon introduced the following documentary evidence:

A dipping notice, directed to and served upon D. D. Daniels of Statenville, Ga., and signed by J. C. Jeter, Cattle Inspector, dated August 23, 1922, which notice is in the words and figures following:

"State of Georgia, Department of Agriculture, Bureau of Live Stock Industry

Dipping Notice. Original No. 79349

County: Echols.

Address: Statenville, Ga.

Mr. D. D. Daniels:

Complying with the provisions of Section 4 of the Statewide Tick Eradication Act of 1918, you are hereby notified to have all of your cattle at McKinnon Vat, dipping vat, for disinfection under official [fol. 93] supervision on 24 day of August, 1922, and every fourteen days thereafter until further and otherwise notified. The Law makes dipping compulsory. Should you fail to dip your cattle, the law provides that the cattle be dipped and quarantined at your expense. The law further provides that, if necessary, the cattle be sold to cover the cost incident to such quarantine and dipping. This 23rd day of August 1922.

(Signed) J. C. Jeter, Cattle Inspector."

At Statenville, Ga.

Also forty-nine (49) additional dipping notices in the same form and of the same tenor and effect, directed to and served upon as many citizens of Echols County, Georgia, residing east of the Apapaha River. All of said notices having been signed and served in the month of August, 1922.

The foregoing constitutes all the material testimony adduced upon the trial of said case. The case was argued to the jury by counsel for the government and counsel for the defense, and after the argument the Court proceeded to charge the jury.

INSTRUCTIONS TO JURY

In the course of the charge the Court instructed the jury as follows:

"I have determined and so charge you, that the employment of men by the Federal Authorities, acting through the Department of Agriculture, in the enforcement of this dipping law, in co-operation with the authorities of the state of Georgia, is valid, so you need not [fol. 94] concern yourselves further in this case with what you think, one way or the other, as to the wisdom of the law, the rightfulness of the law or the constitutionality of the law. I charge you, it is valid law and it is your duty to accept that as being correct."

Before the jury retired, counsel for the defense excepted to that part of the Court's charge to the effect that the employment of men by the Federal authorities acting through the Department of Agriculture, in the enforcement of the dipping law, in co-operation with the authorities of the State of Georgia, was valid upon the ground that it was erroneous and was prejudicial to the defendants, and an exception was duly noted and allowed by the Court.

Further in the course of the charge, the Court instructed the jury as follows:

"It could be shown to you, were it necessary to make a review of it, that from the beginning of the Act of Congress of 1884 through the several acts of the State of Georgia, under which this contract was made that has been introduced to you, that there has been manifested, not gentlemen, an invasion of the rights of the State of Georgia or its citizens on the part of the United States Government,—not that—and while this is not at all essential to the determination of the case, you will find throughout that there is a mutuality evidenced on both sides of an intention to have mutual co-operation; that the Federal employees were here acting under and by virtue of a contract made by the State of Georgia through an officer who was in terms authorized by the State of Georgia to make such a contract—[fol. 95] not the contract in terms, but a contract to carry that into effect. If, therefore, you believe that all or some of these named employees—these employees who are named in the indictment—engaged in the enforcement of the cattle dipping law, you will believe that they were lawfully engaged as employees or agents of the Government of the United States in Georgia, and that they come within the prohibition of the statute of the United States to this effect: 'Whoever shall forcibly assault, resist, oppose, prevent, impede or interfere with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, or on account of the execution of his duties' shall be punished as stated, and 'Whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties' shall be punished. Now, that is the fundamental law upon which is applied the law of conspiracy, which is this: 'If two or more persons conspire either to commit any offense

against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as stated in the statute."

Before the jury retired counsel for the defense excepted to that part of the charge to the effect that the Federal employees were here (in Georgia) acting under and by virtue of a contract made by the [fol. 96] State of Georgia through an officer who was in terms authorized by the State of Georgia to make such a contract—not the contract in terms—but a contract to carry the law into effect, and that if the jury should believe that the employees named in the indictment were engaged in the enforcement of the cattle dipping law, they would believe they were lawfully engaged as employees or agents of the Government of the United States in Georgia, and that they came within the prohibition of the Act of Congress referred to—on the ground that it was erroneous and prejudicial to the defendants, and an exception was duly noted and allowed by the Court.

Further in the course of the charge the Court instructed the jury as follows:

"Gentlemen, I charge you this: that the arrangement made between the United States, though its Department of Agriculture, and the State of Georgia, made through its State Veterinarian, as set forth in this contract which has been introduced in evidence, and the employment of agents to carry that out, as indicated in the contract, is valid."

Before the jury retired, counsel for the defense excepted to that portion of the charge to the effect that the arrangement made between the United States, though its Department of Agriculture, and the State of Georgia, through its State Veterinarian, as set forth in the contract which had been offered and admitted in evidence, and the employment of agents to carry it out, as indicated in the contract, was valid upon the ground that the State Veterinarian of Georgia was [fol. 97] not authorized by law to make a contract with the Bureau of Animal Industry such as the one referred to and which had been offered and admitted in evidence, as aforesaid, and an exception was duly noted and allowed by the Court.

The jury then retired, and after deliberating for a considerable length of time, returned the following verdict:

Verdict omitted, being heretofore copied on page 20.

* * * * *

Thereupon the Court imposed upon the defendants convicted, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley

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McDonald, Waverly McDonald and Tiner Carroll, the following sentence:

Sentence omitted, being heretofore copied on page 20.

* * * * *

ORDERS EXTENDING TIME

During the term of Court at which said verdict was rendered and the sentence imposed, the Court, to-wit: on March 13, 1924, passed an order enlarging and extending the time for presenting for approval and filing a bill of exceptions in said case until the 17th day of May, 1924.

Thereafter, on May 15th, 1924, the Court, for good cause shown, passed an order for further enlarging and extending the time in which to prepare and present for approval and filing a bill of exceptions in said case until the 17th day of June 1924.

[fol. 98] Before the expiration of the time allowed by the last mentioned order, to-wit: On June 16th, 1924, the Court passed an order further extending the time for preparing and presenting for approval and filing the bill of exceptions in said case until the 30th day of June, 1924, and in said order provided that such bill of exceptions might be presented to the Judge of said Court wherever he might be at the time.

IN UNITED STATES DISTRICT COURT

ORDER SETTLING BILL OF EXCEPTIONS

And now, in furtherance of Justice, and that right may be done, the defendants, Oscar Thornton, Shabie Thornton, Inman Thornton, Waverly McDonald, Wesley McDonald and Tinker Carroll tender and present this their bill of exceptions in said case to the action of the Court in the various particulars herein set out, and pray that same may be settled and allowed and that it be signed and sealed by the Court and made a part of the record. Which is accordingly done at Augusta, Georgia, this 27th day of June, 1924.

Wm. H. Barrett, United States Judge.

[fol. 99] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO FILE BILL OF EXCEPTIONS—Filed June 27, 1924

Thereafter, within the time allowed by the Court, to wit, on the 27th day of June, 1924, came certain of the defendants, to-wit:

Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, and duly tendered this their bill of exceptions in said case which, having been seen and examined by the Court and counsel, is by the Court allowed and approved, and the said bill of exceptions is signed and sealed by the Honorable William H. Barrett, the Judge of said Court before whom said proceedings were had, and the same is ordered by said Court to be filed and made a part of the record herein, which is now accordingly done. Let said bill of exceptions be filed and the filing shown of record as of this date.

[fol. 100] Witness the hand and seal of the Judge of said Court before whom said proceedings were had, this the 27th day of June, 1924.

(Signed) Wm. H. Barrett, United States Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed Aug. 11, 1924

Certain of the defendants in the above stated case, to-wit, Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, feeling aggrieved at the [fol. 101] verdict of guilty returned against them on the 13th day of March, 1924, and by the judgment and sentence of the Court imposed upon them in said case on the same date, and also feeling aggrieved by the rulings and decisions of the Court and the Judge presiding therein, which are specifically set forth in their bill of exceptions and in the assignment of errors filed herewith, allege that **the verdict of the jury and sentence of the Court aforesaid are unjust and erroneous and that said Court and the Judge thereof erred in making the rulings and decisions as in said bill of exceptions and assignment of errors set out, greatly to their prejudice and injury, all of which more fully and at large appear in said bill of exceptions and assignment of errors.**

Wherefore, said named defendants now come, within the time allowed by law and pray that a Writ of Error may issue in their behalf to the United States Court of Appeals for the Fifth Circuit, for the correction of the errors so complained of, and that a transcript of the records, proceedings and papers in said case, duly authenticated, may be sent to said Circuit Court of Appeals, that such further proceedings may be had as may be proper in the premises. They further pray that inasmuch as they have heretofore entered into and given supersedeas bonds conditioned for their appearance to stand to and abide the final judgment and sentence of the Court in said case, an order be made directing that all further proceedings be superseded and stayed until final determination of the Writ of

[fol. 102] Error by the United States Circuit Court of Appeals for the Fifth Circuit.

Wilson & Bennett, Branch & Snow, Franklin & Langdale, E. K. Wilcox, Attorneys for the Defendants Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING WRIT OF ERROR AND GRANTING SUPERSEDEAS—
Filed Aug. 11, 1924

On this 29th day of July, 1924, came certain of the defendants in [fol. 103] the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carrol, by their attorneys of record, and filed herein and presented to the Court their petition for a Writ of Error to the United States Circuit Court of Appeals for the Fifth Circuit, with which they also present and assignment of error alleged to have been committed, and in their said petition they also prayed that a transcript of the records, proceedings and papers in said case, duly authenticated, to be sent to the United States Circuit Court of Appeals for the Fifth Circuit, that such further proceedings may be had as may be proper in the premises.

Upon consideration whereof, the Court does hereby allow and grant the Writ of Error, which said Writ of Error shall operate as a supersedeas.

This 29th day of July, 1924.

Wm. H. Barrett, United States District Judge.

[fol. 104] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Aug. 11, 1924

Come now certain of the defendants in the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, and file the following assignment of errors, upon which they will rely in the prosecution of the writ of error in said case, to-wit:

1

The Court erred in overruling the demurrer to the indictment and each count thereof, the said indictment and each count thereof

being fatally defective for each of the reasons set forth in the several grounds of the demurrer.

The Court erred in admitting in evidence over defendants' objection, the contract between A. D. Melvin, Chief of the Bureau of [fol. 105] Animal Industry, United States Department of Agriculture, and Peter F. Bahnsen, State Veterenarian, State Department of Agriculture of the State of Georgia, dated June 17th, 1915, which contract purported to provide for a plan of co-operation between the Bureau of Animal Industry of the United States Department of Agriculture and the State Veterenarian of the Department of Agriculture of the State of Georgia, for the eradication of the cattle tick in the State of Georgia.

Said contract when offered in evidence was objected to by counsel for the defendants, on the following grounds: (a) because Peter F. Bahnsen, State Veterenarian, was not authorized under the law to make any such contract with the Chief of the Bureau of Animal Industry, or with the Bureau of Animal Industry; (b) because there is nothing in the indictment which charges that the work of tick eradication in Echols County, Georgia, was proceeding at the time of the acts alleged to have been committed by the defendants, under the Act of Congress of May 29th, 1884, and there is nothing in said indictment which charges that there had been any contract or agreement between the State of Georgia or any authority of the State and the Department of Agriculture of the United States; and (c) because the Department of Agriculture had no authority under the law, to make such a contract, and the employees of the Bureau of Animal Industry were not authorized under the law to perform the duties set forth in the contract, even if it was made as appears from the memorandum of agreement offered in evidence.

The ruling and decision of the Court in admitting the said contract in evidence was erroneous, for each and all of said reasons.

[fol. 106] The Court erred in charging the Jury, as follows:

"I have determined and so charge you, that the employment of men by the Federal Authorities, acting through the Department of Agriculture in the enforcement of this dipping law, in co-operation with the authorities of the State of Georgia, is valid; so you need not concern yourselves further in this case with what you think one way or the other as to the wisdom of the law, the rightfulness of the law, or the constitutionality of the law. I charge you it is a valid law, and it is your duty to accept that as being correct."

Said charge was error, because (a) there is no authority of law for the Bureau of Animal Industry to engage in and carry on the work of dipping and disinfection of domestic cattle, in the State of Georgia, for the purpose of eradicating the cattle tick, in co-operation with the authorities of said State, or otherwise; and (b) the Federal Officers and employees of the Bureau of Animal In-

dustry, have no authority to engage in the enforcement of the State-wide tick eradication law.

4

The Court erred in charging the jury as follows:

"It could be shown to you were it necessary to make a review of it, that from the beginning of the Act of Congress of 1884, through the several Acts of the State of Georgia, under which this contract was made that has been introduced to you, that there has [fol. 107] been manifested, not, gentlemen, an invasion of the rights of the State of Georgia or its citizens, on the part of the United States Government,—not that—and while this is not at all essential to the determination of the case, you will find throughout that there is a mutuality evidence and evidence on both sides, of an intention to have mutual co-operation; that the Federal Employees were here acting under and by virtue of a contract made by the State of Georgia through an officer, who was in terms authorized by the State of Georgia, to make such a contract—not the contract in terms, but a contract to carry that into effect. If, therefore, you believe that all or some of these named employees—these employees who are named in the indictment—engaged in the enforcement of the cattle dipping law, you will believe that they were lawfully engaged as employees or agents of the Government of the United States, to this effect: 'whoever shall forcibly assault, resist, oppose, prevent, impede or interfere, with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture, in the execution of his duties, or on account of the execution of his duties' shall be punished as stated, and 'whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture, in the execution of his duties with the intent to commit a bodily injury upon him, or to deter or prevent him from discharging his duties, or on account of the performance of his duties' shall be punished. Now that is the fundamental law upon which is applied the law of Conspiracy, which is this: 'If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or [fol. 108] for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy, shall be' punished, as stated in the Statute."

Said charge was erroneous, because, (a) the Federal Employees named in the indictment, were not lawfully engaged as such, in the enforcement of the Georgia Cattle Dipping Law, and (b) there is no authority of law for the Bureau of Animal Industry to engage in and carry on the work of dipping and disinfection of domestic cattle in the State of Georgia, for the purpose of eradicating the cattle tick, in co-operation with the Authorities of said State, or otherwise.

The Court erred in charging the jury as follows:

"Gentlemen, I charge you this; that the arrangement made between the United States through its Department of Agriculture, and the State of Georgia made through its State Veterenarian, as set forth in this contract which has been introduced in evidence, and the employment of agents to carry that out, as indicated in the contract, is valid."

The said charge was erroneous, because (a) the arrangement made between the United States through its Department of Agriculture, and the State of Georgia through its State Veterenarian, as set forth in the contract referred to, is as matter of law, invalid, and (b) the employment of agents to carry out said contract was without authority of law and illegal.

[fol. 109] Wherefore, said named defendants pray that the judgment of the Court in said case may be reversed.

Wilson & Bennett, Branch & Snow, Franklin & Langdale,
E. K. Wilcox, Attys. for Defendants Oscar Thornton,
Shabie Thornton, Inman Thornton, Wesley McDonald,
Waverly McDonald, and Tinker Carroll.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF DEFENDANTS FOR BAIL

To the Hon. Wm. H. Barrett, Judge of said Court:

Come now certain of the defendants in the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, [fol. 110] Wesley McDonald, Waverly McDonald and Tinker Carroll, against whom a verdict of guilty was returned and upon whom sentence was imposed therein, and show to the Court that heretofore, to-wit, on July 29th, 1924, they were allowed a Writ of Error from this Court to the United States Circuit Court of Appeals, for the Fifth Circuit, and by order of the Court it was provided that said Writ should operate as a supersedeas. They further show that the citation signed by the Judge of this Court, when said Writ of Error was allowed, has been duly served and that they are entitled to be admitted to bail pending the Writ of Error.

Wherefore, said named defendants pray that they be admitted to bail pending the Writ of Error, in such amount as may to the Judge of said Court seem good, reasonable, and proper.

Wilson & Bennett, Branch & Snow, Franklin & Langdale,
E. K. Wilcox, Attorneys for Defendants Oscar Thornton,
Shabie Thornton, Inman Thornton, Wesley McDonald,
Waverly McDonald, and Tinker Carroll.

[fol. 111] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING BAIL —Filed Aug. 11, 1924

It appearing that a Writ of Error has been sued out by certain of the defendants in the above stated case, to-wit: **Oscar Thornton**, **Shabie Thornton**, **Inman Thornton**, **Wesley McDonald**, **Waverly McDonald** and **Tinker Carrol** returnable to the **United States Circuit Court of Appeals**, for the Fifth Circuit, from a judgment made and entered against them in said case on the 13th day of March, 1924, and that the citation signed by the Judge of this Court when the Writ of Error was allowed, has been duly served, it is now upon motion of said named defendants, ordered, that they be admitted to bail pending the Writ of Error, in the sum of \$1,000.00 each, conditioned as the law directs.

This August 7th, 1924.

Wm. H. Barrett, U. S. District Judge.

[fol. 112] BAIL BOND OF OSCAR THORNTON FOR \$1,000—Approved and filed Aug. 11, 1924; omitted in printing

[fols. 113 & 114] BAIL BOND OF SHABIE THORNTON FOR \$1,000—Approved and filed Aug. 11, 1924; omitted in printing

[fols. 115 & 116] BAIL BOND OF INMAN FOR \$1,000—Approved and filed Aug. 11, 1924; omitted in printing

[fols. 117 & 118] BAIL BOND OF WESLEY McDONALD FOR \$1,000—Approved and filed Aug. 11, 1924; omitted in printing

[fols. 119 & 120] BAIL BOND OF WAVERLY McDONALD FOR \$1,000—Approved and filed Aug. 11, 1923; omitted in printing

[fols. 121 & 122] BAIL BOND OF TINKER CARROLL FOR \$1,000—Approved and filed Aug. 11, 1924; omitted in printing

[fol. 123] IN UNITED STATES DISTRICT COURT

PRÆCIPUE FOR TRANSCRIPT OF RECORD—Filed Aug. 11, 1924

To the Clerk of said Court:

You will please incorporate into the transcript of the record in the above stated case, to be sent to the United States Circuit Court of Appeals, for the Fifth Circuit, the following parts of the record:

[fol. 124] 1. The Indictment.

2. The demurrer to the indictment and the order overruling the same.

3. The plea of not guilty entered by the Defendants.

4. The verdict of the Jury and the judgment and sentence of the Court.

5. The order granted on March 13th, 1924, extending the time for presenting for approval and filing, a bill of exceptions, until May 17th, 1924.

6. The order granted on March 13th, 1924, granting a supersedeas and admitting the defendants, Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, to bail.

7. The order granted May 15th, 1924, further extending the time for presenting for approval and filing, a bill of exceptions, until June 17th, 1924.

8. The order granted June 16th, 1924, further enlarging and extending the time for presenting for approval and filing, a bill of exceptions, until June 30th, 1924.

9. The bill of exceptions and order settling and allowing the same.

10. The petition for Writ of Error.

11. The order allowing the Writ of Error.

12. The assignment of errors.

13. The citation to the United States of America with the acknowledgment of service thereon.

[fol. 125] 14. The petition for order allowing bail pending the writ of error, and the order granted thereon.

15. The bail bonds of the defendants pending the writ of error.

16. The præcipe for transcript of the record.

Branch & Snow, Wilson & Bennett, Franklin & Langdale,
E. K. Wilcox, Attorneys for Defendants Oscar Thornton,
Shabie Thornton, Inman Thornton, Wesley McDonald,
Waverly McDonald, and Tinker Carroll.

Service of the foregoing praecipe for transcript acknowledged; copy received, and all other and further service waived.

This August 5, 1924.

F. G. Boatright, United States Attorney. Chas. L. Redding,
Asst. United States Attorney.

Writ of Error and Citation omitted from the printed record, the originals thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * *

[fol. 126] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, W. E. Perry, Deputy Clerk of the District Court of the United States for the Southern District of Georgia, Southwestern Division, do hereby certify that the within and foregoing one hundred and eighteen (118) pages of typewritten matter is a true, full and complete transcript of such parts of the record in the case of the United States of America vs. Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, Tinker Carroll, J. B. Hicks, W. W. Pennington, H. J. Carter, alias Mann Carter, Fred Carter, Will Carter, Borah Corbett, Floyd Carter, George Hernon, Rader Carter, Wiley Corbett, Frank Staten, E. W. Prescott, Buck Carter, Neely Hires and Jim Howell, (being Criminal Case No. 688 in said District and Division), as is specified in the praecipe of counsel for the appellants in said cause, to-wit, Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, as fully as the same appears of file and of record in the office of the Clerk of the District Court of the United States for the Southern District of Georgia, at Valdosta, Georgia. Said praecipe filed by counsel for appellants is a part of the foregoing record, and is numbered pages one hundred and seventeen and one hundred and eighteen thereof.

In witness whereof, I have hereunto set my hand and attached the official seal of the said Court, at Valdosta, Georgia, this the 11th day of August, A. D. 1924.

W. E. Perry, Deputy Clerk of the District Court of the United States for the Southern District of Georgia. (Seal.)

[fol. 127] IN UNITED STATES CIRCUIT COURT OF APPEALS

ARGUMENT AND SUBMISSION—October 8th, 1924.

On this day this cause was called, and, after argument by L. W. Branch, Esq., for plaintiffs in error, and Charles L. Redding, Esq., Assistant United States Attorney, for defendant in error, was submitted to the Court.

[fol. 128] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH
CIRCUIT

No. 4413

OSCAR THORNTON, et als., Plaintiffs in Error,

versus

THE UNITED STATES OF AMERICA, Defendant in Error

Error to the District Court of the United States for the Southern
District of Georgia

E. K. Wilcox, L. W. Branch, Harley Langdale, Omer W. Franklin, John W. Bennett, Russell Snow (Wilson & Bennett on the brief), for Plaintiffs in Error.

F. G. Boatright, U. S. Atty., Chas. L. Redding, Asst. U. S. Atty., for defendant in Error.

Before Walker, Bryan and King, Circuit Judges

OPINION—Filed November 5, 1924

BRYAN, Circuit Judge:

The plaintiffs in error, hereinafter called defendants, were convicted of a conspiracy to use deadly and dangerous weapons upon employees of the Bureau of Animal Industry of the United States Department of Agriculture, with intent to deter and prevent such employees from discharging their duties of supervising the dipping [fol. 129] of cattle, in order to prevent a spread of splenic fever among cattle, and in order to eradicate from tick infested cattle what is commonly known as the cattle fever tick, in violation of § 62 of the Criminal Code.

Several overt acts were charged, but it is unnecessary to enumerate them as it is not denied that there was sufficient proof of some of them.

It is first insisted that the trial court erred in overruling a demurrer to the indictment. The principal objection to the indictment is that it fails to allege or show that the cattle to be shipped were being, or were intended to be, shipped in interstate commerce. We are of opinion that this objection is untenable. The Commis-

sioner of Agriculture is authorized by the Act of May 29, 1884, 23 Stat. 31, to prepare such rules and regulations as he may deem necessary for the suppression of contagious, infectious and communicable diseases of domestic animals, to make investigations, and to co-operate with state authorities, and by disinfection and quarantine measures to prevent the spread of disease from one state into another. The County of Echols, in which the employees of the Bureau of Animal Industry were alleged to be engaged, is bounded on the south by a county in the State of Florida. The supervision of cattle complained of had a direct tendency to prevent the spread of disease into another state. This act of supervision was so closely connected with interstate commerce as to authorize the Government to supervise the dipping of domestic cattle.

Another objection to the indictment is that it fails to allege an acceptance by the State of Georgia of the regulations and methods of the Commissioner of Agriculture of the United States, which is contemplated by section 3 of the Act of Congress of 1884. Such acceptance appears from statutes of Georgia which authorize the State [fol. 130] veterinarian to assume charge of the work of cattle tick eradication in co-operation with federal authorities, (Georgia Laws of 1910, page 125), and provide that cattle infested with cattle tick shall be dipped in vats properly charged with arsenical solution, in accordance with recommendations by the United States Bureau of Animal Industry, (Georgia Laws of 1918, page 256). It was not necessary that the indictment should plead the Georgia statutes, as it was the duty of the trial court to take judicial notice of them. *United Divers Supply Co. v. Commercial Credit Co.*, 289 Fed. 316. We are of opinion therefore that the indictment is sufficient.

A contract between the State veterinarian of Georgia and the chief of the Bureau of Animal Industry was admitted in evidence over defendant's objection. It merely provided for co-operation in the work of tick eradication. We think it was admissible as showing that the federal employees were present in the county by authority of the state, and were not mere intruders or intermeddlers; but if inadmissible, the contract could not possibly have operated to the injury of the defendants.

Objections were made to certain charges of the court, but they only raise questions which have already been disposed of, and need not be considered.

The judgment is affirmed.

[fol. 131] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—November 5, 1924

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause, be, and the same is hereby, affirmed.

[fol. 132] IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 127 to 131 next preceding this certificate contain a full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 4413, wherein Oscar Thornton, et als., are plaintiffs in error and the United States of America is defendant in error, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 126 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 2nd day of January, A. D. 1925.

Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal of United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 133] IN SUPREME COURT OF THE UNITED STATES

ORDER GRANTING PETITION FOR CERTIORARI—Filed March 9, 1925

On Petition for Writ of Certiorari to the United States Circuit Court Appeals for the Fifth Circuit

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Fifth Circuit, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.